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# Vol. 1

## TRANSCRIPT OF RECORD

(Pages 1 to 106)

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# Supreme Court of the United States

OCTOBER TERM, 1950.

## No. 201

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HARRY SACHER, RICHARD GLADSTEIN, GEORGE W. CROCKETT, JR., ET AL., PETITIONERS,

*vs.*

THE UNITED STATES OF AMERICA

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

---

PETITION FOR CERTIORARI FILED JULY 14, 1950.

CERTIORARI GRANTED OCTOBER 22, 1951.

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IN THE

# United States Court of Appeals

## FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

HARRY SACHER, RICHARD GLADSTEIN, GEORGE W. CROCKETT, JR., LOUIS F. McCABE, ABRAHAM J. ISSERMAN and EUGENE DENNIS,

Appellants.

## Statement Under Rule 15 (b).

In the case of the *United States* v. *William Z. Foster et al.*, C 128-87 et al., tried before Hon. Harold R. Medina and a jury in the District Court for the Southern District of New York, the appellant Eugene Dennis was attorney pro se, and the appellants Harry Sacher, Richard Gladstein, George W. Crockett, Jr., Louis F. McCabe and Abraham J. Isserman were attorneys for various individual defendants who there stood trial.

On the 14th day of October, 1949, after the jury had rendered its verdict in the above-described case of *William Z. Foster, et al.*, C 128-87 et al., and after the Trial Judge had discharged the jury, he adjudicated the appellants to be guilty of criminal contempts which the Court found had been committed during the trial. Thereupon he sentenced the said appellants.

*Statement Under Rule 15(b).*

On the 14th day of October, 1949 Judge Medina filed a contempt certificate pursuant to Rule 42 (a) of the Federal Rules on Criminal Procedure.

On the said 14th day of October, 1949 Judge Medina signed and filed orders of contempt as to each of the appellants as follows:

"Eugene Dennis adjudged guilty of contempt of court as specified in Specifications I, XIX, XXII, XXXI, XL of Contempt Certificate and sentenced to Six Months on each contempt to run concurrently, and to be committed to custody of the Atty. Genl. or his authorized representative for imprisonment on Nov. 15, 1949.

"Louis F. McCabe adjudged guilty of contempt of court as specified in Specifications I, VI, VII, VIII, IX, XXVII of Contempt Certificate and sentenced to Thirty Days on each contempt to run concurrently, and to be committed to custody of the Atty. Genl. or his authorized representative for imprisonment on Nov. 15, 1949.

"Abraham J. Isserman adjudged guilty of contempt of court as specified in Specifications I, VI, VII, XII, XXVII, XXXI, XXXII, of Contempt Certificate and sentenced to Four Months on each contempt to run concurrently, and to be committed to custody of the Atty. Genl. or his authorized representative for imprisonment on Nov. 15, 1949.

"Harry Sacher adjudged guilty of contempt of court as specified in Specifications I, II, V, VI, VII, VIII, XII, XIV, XV, XVI, XVII, XVIII, XIX, XXV, XXVII, XXVIII, XXIX, XXX, XXXI, XXXIII, XXXVI, XXXVII, XXXIX, of Contempt Certificate and sen-

tenced to Six Months on each contempt to run concurrently, and to be committed to custody of the Atty. Genl. or his authorized representative for imprisonment on Nov. 15, 1949.

"Richard Gladstein adjudged guilty of contempt of court as specified in Specifications I, IV, VI, VIII, X, XI, XII, XIII, XVIII, XX, XXIII, XXIV, XXVI, XXVII, XXXI, XXXII, XXXIV, XXXV, of Contempt Certificate and sentenced to Six Months on each contempt to run concurrently, and to be committed to custody of the Atty. Genl. or his authorized representative for imprisonment on Nov. 15, 1949.

"George W. Crockett, Jr., adjudged guilty of contempt of court as specified in Specifications I, III, VII, XXI, XXII, XXVII, XXIX, XXXVII, XXXVIII, of Contempt Certificate and sentenced to Four Months on each contempt to run concurrently, and to be committed to custody of the Atty. Genl. or his authorized representative for imprisonment on Nov. 15, 1949."

On the 21st day of October each of the appellants herein filed a notice of appeal from the order of contempt made against him. Such notice of appeal was filed in the office of the Clerk of the District Court of the Southern District of New York.

On the 28th day of October, 1949 the appellants by Raphael H. Weissman, their attorney, moved in this Court for a stay of execution of the prison sentence imposed upon each of the appellants respectively.

By its order dated November 1, 1949 this Court stayed execution of the sentences imposed upon the appellants until December 12, 1949, at which time application for further stay may be made. By the said order the Court set the argument of the appeal for December 12, 1949.

*Statement Under Rule 15(b).*

Thereafter and on November 25, 1949 an order of substitution of attorneys was filed whereby Wolf, Popper, Ross & Wolf, 160 Broadway, New York City were substituted for the appellants in place and stead of Raphael H. Weissman, Esq. John F. X. McGohey, Esq., U. S. attorney for the Southern District of New York, represented the Government on the trial of the *United States* v. *William Z. Foster et al.* On this appeal the Government is represented by Irving H. Saypol, Esq., presently U. S. attorney for the said District.

On the said 25th day of November, 1949 the attorneys for the appellants filed a designation of the record on appeal.

On the 30th day of November, 1949 the record of the proceedings in the Court below was certified by the Clerk of the U. S. District Court for the Southern District of New York and docketed in the office of the Clerk of this Court.

On the 5th day of December, 1949, on application of the appellants, this Court stayed execution of the sentences until February 6, 1950. By the said order, the Court set argument of the appeal for February 6, 1950.

## Notice of Appeal of Appellant Eugene Dennis.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| UNITED STATES OF AMERICA<br>v.<br>EUGENE DENNIS,<br>Defendant. | C 131-36 |

*Name and address of appellant:*

Eugene Dennis, 401 Broadway, New York 13, N. Y., Room 1602.

*Name and address of appellant's attorney:*

Eugene Dennis, Attorney Pro Se, 401 Broadway, New York 13, New York, Room 1602.

*Offense:* Contempt of Court.

*Concise statement of judgment or order, giving date and any sentence:*

Order adjudges appellant guilty of contempt of court as specified in certificate accompanying said order. Order is dated October 14, 1949. Appellant sentenced to imprisonment for period of six months.

*Name of institution where now confined, if not on bail:*

Order appealed from provides that sentence shall commence on November 15, 1949.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the above-stated order.

Dated: New York, October 21, 1949.

EUGENE DENNIS,
Appellant.

## Notice of Appeal of Appellant George W. Crockett, Jr.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA<br>v.<br>GEORGE W. CROCKETT, JR.,<br>Defendant. | C 131-36 |

*Name and address of appellant:*

George W. Crockett, Jr., 401 Broadway, New York 13, N. Y., Room 1602.

*Name and address of appellant's attorney:*

George W. Crockett, Jr., Attorney Pro Se, 401 Broadway, New York 13, N. Y., Room 1602.

*Offense:* Contempt of Court.

*Concise statement of judgment or order, giving date and any sentence:*

Order adjudges appellant guilty of contempt of court as specified in certificate accompanying said order. Order is dated October 14, 1949. Appellant sentenced to imprisonment for period of four months.

*Name of Institution where now confined, if not on bail:*

Order appealed from provides that sentence shall commence on November 15, 1949.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the above-stated order.

Dated: New York, October 21, 1949.

GEORGE W. CROCKETT, JR.,
Appellant.

## Notice of Appeal of Appellant Richard Gladstein.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA<br>v.<br>RICHARD GLADSTEIN,<br>Defendant. | C 131-36 |

*Name and address of appellant:*

Richard Gladstein, 401 Broadway, New York 13, N. Y., Room 1602.

*Name and address of appellant's attorney:*

Richard Gladstein, Attorney Pro Se, 401 Broadway, New York 13, N. Y., Room 1602.

*Offense:* Contempt of Court.

*Concise statement of judgment or order, giving date and any sentence:*

Order adjudges appellant guilty of contempt of court as specified in certificate accompanying said order. Order is dated October 14, 1949. Appellant sentenced to imprisonment for period of six months.

*Name of Institution where now confined, if not on bail:*

Order appealed from provides that sentence shall commence on November 15, 1949.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the above-stated order.

Dated: New York, October 21, 1949.

RICHARD GLADSTEIN,
Appellant.

**Notice of Appeal of Appellant Abraham J. Isserman.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA<br>v.<br>ABRAHAM J. ISSERMAN,<br>Defendant. | C 131-36 |

*Name and address of appellant:*

Abraham J. Isserman, 401 Broadway, New York 13, N. Y., Room 1602.

*Name and address of appellant's attorney:*

Abraham J. Isserman, Attorney Pro Se, 401 Broadway, New York 13, N. Y., Room 1602.

*Offense:* Contempt of Court.

*Concise statement of judgment or order, giving date and any sentence:*

Order adjudges appellant guilty of contempt of court as specified in certificate accompanying said order. Order is dated October 14, 1949. Appellant sentenced to imprisonment for period of four months.

*Name of Institution where now confined, if not on bail:*

Order appealed from provides that sentence shall commence on November 15, 1949.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the above-stated order.

Dated: New York, October 21, 1949.

ABRAHAM J. ISSERMAN,
Appellant.

## Notice of Appeal of Appellant Louis F. McCabe.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA<br>v.<br>LOUIS F. McCABE,<br>Defendant. | C 131-36 |

*Name and address of appellant:*

Louis F. McCabe, 401 Broadway, New York 13, N. Y., Room 1602.

*Name and address of appellant's attorney:*

Louis F. McCabe, Attorney Pro Se, 401 Broadway, New York 13, N. Y., Room 1602.

*Offense:* Contempt of Court.

*Concise statement of judgment or order, giving date and any sentence:*

Order adjudges appellant guilty of contempt of court as specified in certificate accompanying said order. Order is dated October 14, 1949. Appellant sentenced to imprisonment for period of thirty days.

*Name of Institution where now confined, if not on bail:*

Order appealed from provides that sentence shall commence on November 15, 1949.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the above-stated order.

Dated: New York, October 21, 1949.

LOUIS F. McCABE,
Appellant.

**Notice of Appeal of Appellant Harry Sacher.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA<br>v.<br>HARRY SACHER,<br>Defendant. | C 131-36 |

*Name and address of appellant:*

Harry Sacher, 401 Broadway, New York 13, N. Y., Room 1602.

*Name and address of appellant's attorney:*

Harry Sacher, Attorney Pro Se, 401 Broadway, New York 13, N. Y., Room 1602.

*Offense:* Contempt of Court.

*Concise statement of judgment or order, giving date and any sentence:*

Order adjudges appellant guilty of contempt of court as specified in certificate accompanying said order. Order is dated October 14, 1949. Appellant sentenced to imprisonment for period of six months.

*Name of Institution where now confined, if not on bail:*

Order appealed from provides that sentence shall commence on November 15, 1949.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the above-stated order.

Dated: New York, October 21, 1949.

HARRY SACHER,
Appellant.

## Order re Eugene Dennis, Appealed From.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

EUGENE DENNIS,

Defendant.

### ORDER ON CONTEMPT

On this 14th day of October, 1949, the defendant appeared in person.

IT IS ADJUDGED that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, XIX, XXII, XXXI, XL.

IT IS ADJUDGED that the defendant is sentenced to imprisonment for a period of six months on each contempt, and that the aforesaid sentences shall be served concurrently.

IT IS ADJUDGED that on the 15th day of November, 1949, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six months.

IT IS ORDERED that the Clerk deliver a certified copy of this order on contempt and the accompanying certificate to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(sgd.) HAROLD R. MEDINA,
*United States District Judge.*

**Order re George W. Crockett, Jr., Appealed From.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

GEORGE W. CROCKETT, JR.,
Defendant.

ORDER ON CONTEMPT

On this 14th day of October, 1949, the defendant appeared in person.

IT IS ADJUDGED that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, III, VII, XXI, XXII, XXVII, XXIX, XXXVII, XXXVIII.

IT IS ADJUDGED that the defendant is sentenced to imprisonment for a period of four months on each contempt, and that the aforesaid sentences shall be served concurrently.

IT IS ADJUDGED that on the 15th day of November, 1949, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four months.

IT IS ORDERED that the Clerk deliver a certified copy of this order on contempt and the accompanying certificate to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(sgd.) HAROLD R. MEDINA,
*United States District Judge.*

**Order re Richard Gladstein, Appealed From.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

RICHARD GLADSTEIN,

Defendant.

ORDER ON CONTEMPT

On this 14th day of October, 1949, the defendant appeared in person.

IT IS ADJUDGED that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, IV, VI, VIII, X, XI, XII, XIII, XVIII, XX, XXIII, XXIV, XXVI, XXVII, XXXI, XXXII, XXXIV, XXXV.

IT IS ADJUDGED that the defendant is sentenced to imprisonment for a period of six months on each contempt, and that the aforesaid sentences shall be served concurrently.

IT IS ADJUDGED that on the 15th day of November, 1949, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six months.

IT IS ORDERED that the Clerk deliver a certified copy of this order on contempt and the accompanying certificate to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(sgd.) HAROLD R. MEDINA,
*United States District Judge.*

**Order re Abraham J. Isserman, Appealed From.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ABRAHAM J. ISSERMAN,

Defendant.

ORDER ON CONTEMPT

On this 14th day of October, 1949, the defendant appeared in person.

IT IS ADJUDGED that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, VI, VII, XII, XXVII, XXXI, XXXII.

IT IS ADJUDGED that the defendant is sentenced to imprisonment for a period of four months on each contempt, and that the aforesaid sentences shall be served concurrently.

IT IS ADJUDGED that on the 15th day of November, 1949, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four months.

IT IS ORDERED that the Clerk deliver a certified copy of this order on contempt and the accompanying certificate to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(sgd.) HAROLD R. MEDINA,
*United States District Judge.*

**Order re Louis F. McCabe, Appealed From.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

LOUIS F. McCABE,

Defendant.

ORDER ON CONTEMPT

On this 14th day of October, 1949, the defendant appeared in person.

IT IS ADJUDGED that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, VI, VII, VIII, IX, XXVII.

IT IS ADJUDGED that the defendant is sentenced to imprisonment for a period of thirty days on each contempt, and that the aforesaid sentences shall be served concurrently.

IT IS ADJUDGED that on the 15th day of November, 1949, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of thirty days.

IT IS ORDERED that the Clerk deliver a certified copy of this order on contempt and the accompanying certificate to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(sgd.) HAROLD R. MEDINA,
*United States District Judge.*

**Order re Harry Sacher, Appealed From.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

HARRY SACHER,

Defendant.

ORDER ON CONTEMPT

On this 14th day of October, 1949, the defendant appeared in person.

IT IS ADJUDGED that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, II, V, VI, VII, VIII, XII, XIV, XV, XVI, XVII, XVIII, XIX, XXV, XXVII, XXVIII, XXIX, XXX, XXXI, XXXIII, XXXVI, XXXVII, XXXIX.

IT IS ADJUDGED that the defendant is sentenced to imprisonment for a period of six months on each contempt, and that the aforesaid sentences shall be served concurrently.

IT IS ADJUDGED that on the 15th day of November, 1949, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six months.

IT IS ORDERED that the Clerk deliver a certified copy of this order on contempt and the accompanying certificate to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(sgd.) HAROLD R. MEDINA,
*United States District Judge.*

**Contempt Certificate Pursuant to Rule 42(a), Federal Rules of Criminal Procedure.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

HARRY SACHER, RICHARD GLADSTEIN, GEORGE W. CROCKETT, JR., LOUIS F. McCABE, ABRAHAM J. ISSERMAN, and EUGENE DENNIS,

Defendants.

In conformity with Rule 42(a), Federal Rules of Criminal Procedure, I hereby certify that the series of criminal contempts set forth below were committed in the actual presence of the Court and were seen or heard by the Court during the trial of the case of *United States of America* v. *Foster, et. al.*, C 128-87, which commenced on January 17, 1949.

By way of preliminary, I may say that I would have overlooked or at most merely reprimanded counsel for conduct which appeared to be the result of the heat of controversy or of that zeal in the defense of a client or in one's own defense which might understandably have caused one to overstep the bounds of strict propriety. Before the trial had progressed very far, however, I was reluctantly forced to the conclusion that the acts and statements to which I am about to refer were the result of an agreement between these defendants, deliberately entered into in a cold and calculating manner, to do and say these things for the purpose of: (1) causing such delay and confusion as to make it impossible to go on with the trial; (2) provoking incidents which they intended would result in a mistrial; and (3) impairing my health so that the trial could not continue.

I find that the acts, statements and conduct of each of the defendants, hereinafter specified, constituted a deliberate and wilful attack upon the administration of justice, an attempt to sabotage the functioning of the federal judicial system, and misconduct of so grave a character as to make the mere imposition of fines a futile gesture and a wholly insufficient punishment. To maintain the dignity of the court and to preserve order in the court room, under these circumstances, was a task of the utmost difficulty. There was, accordingly, no alternative than to give the repeated warnings which from time to time I gave, and to postpone the impositions of the sentence until the close of the case. To have done otherwise would inevitably have broken up the trial and thus served the ends which these defendants tried so hard to attain. As isolated quotations from or references to the transcript can give but a partial view of the acts, statements, and conduct above referred to, I hereby make the entire record part of these proceedings.

Accordingly, I adjudge the following guilty of the several criminal contempts described below:

| *Defendant* | *Specifications* |
|---|---|
| Harry Sacher | I, II, V, VI, VII, VIII, XII, XIV, XV, XVI, XVII, XVIII, XIX, XXV, XXVII, XXVIII, XXIX, XXX, XXXI, XXXIII, XXXVI, XXXVII, XXXIX. |
| Richard Gladstein | I, IV, VIII, X, XI, XII, XIII, XVIII, XX, XXIII, XXIV, XXVI, XXVII, XXXI, XXXII, XXXIV, XXXV. |
| George W. Crockett, Jr. | I, III, VII, XXI, XXII, XXVII, XXIX, XXXVII, XXXVIII. |
| Louis F. McCabe | I, VI, VII, VIII, IX. XXVII. |
| Abraham J. Isserman | I, VI, VII, XII, XXVII, XXXI, XXXII. |
| Eugene Dennis | I, XIX, XXII, XXXI, XL. |

I.

During the entire trial, Messrs. Sacher, Gladstein, Crockett, McCabe, and Isserman, attorneys and counsellors-at-law, and after March 17, 1949, Mr. Dennis, attorney *pro se,* joined in a wilful, deliberate, and concerted effort to delay and obstruct the trial of *United States* v. *Foster, et al.,* C 128-87, for the purpose of causing such disorder and confusion as would prevent a verdict by a jury on the issues raised by the indictment; and for the purpose of bringing the Court and the entire Federal judicial system into general discredit and disrepute, by endeavoring to divert the attention of the Court and jury from the serious charge against their clients of a conspiracy in substance to teach and advocate the overthrow of the Government of the United States by force and violence, by attacking the Presiding Judge and all the Judges of this Court, the jury system in this District, the Department of Justice of the United States, the President of the United States, the police of New York City, and the public press of New York and other cities.

To effect this plan, these defendants in this proceeding, contemptuously and without justification:

a. Disregarded numerous warnings of the Court concerning their wilful delaying tactics, except for ironical references thereto;

b. Suggested that various findings by the Court were made for the purpose of newspaper headlines;

c. Insinuated that there was connivance between the Court and the United States Attorney;

d. Insisted on objecting one after another to rulings of the Court, despite a ruling on the first day of the trial, repeated several times thereafter, that all objections and exceptions would inure to the benefit of each of their clients unless disclaimed;

e. Persisted in making long, repetitious, and unsubstantial arguments, objections, and protests, working in shifts, accompanied by shouting, sneering, and snickering;

f. Urged one another on to badger the Court;

g. Repeatedly made charges against the Court of bias, prejudice, corruption, and partiality;

h. Made a succession of disrespectful, insolent, and sarcastic comments and remarks to the Court;

i. Disregarded repeatedly and flagrantly the orders of the Court not to argue without permission and to desist from further argument or comment;

j. Disregarded rulings on the admissibility of evidence so as to endeavor to place before the jury by leading questions the subject matter excluded;

k. Persisted in asking questions on excluded subject matters, knowing that objections would be sustained, to endeavor to create a false picture of bias and partiality on the part of the Court;

l. Accused the Court of racial prejudice without any foundation; and

m. Generally conducted themselves in a most provocative manner in an endeavor to call forth some intemperate or undignified response from the Court which could then be relied upon as a demonstration of the Court's unfitness to preside over the trial.

II.

On January 21, 1949, during the hearing on defendants' challenge to the jury system, Herbert Allen, a member of the petit jury panel for the January Term of Court, was called as the first witness in support of the challenge.

During this direct examination by Mr. Gladstein, Mr. Allen was asked for the assessed valuation of his home, to which question an objection was sustained. Thereafter, lengthy argument was directed to the Court by Messrs. Gladstein, McCabe, Isserman and Sacher, which was brought to a conclusion with Mr. Sacher shouting at the Court (Ch. Tr. 1390):

> "Well, let me make one thing clear; your Honor said that you were going to conduct a hearing, and I tell you now if what you are going to do is to prevent us from asking these questions and proving the fact, then this hearing is no hearing; *it is just a sham and a pretense designed to prevent the establishment of those facts which will prove that the system is precisely what we say it is.*"

III.

On February 2, 1949, during the challenge to the jury system, Harry Rosten, Research Manager for THE NEW YORK TIMES, was being questioned by Mr. Isserman about Challenge Exhibit No. 20, already in evidence. Objection was made to the line of questioning being conducted by Mr. Isserman, and following argument, the Court sustained the objection. Thereupon, Mr. Gladstein and Mr. Sacher further argued the matter. They were followed by Mr. Crockett, who did not argue but limited himself to the insinuation quoted below (Ch. Tr. 2302):

> "I have only one comment to make, your Honor. I have listened very carefully to the proceedings during the whole time this was going on and what surprises me, frankly, your Honor, is the frequency with which Mr. McGohey will make an objection and the Court will sustain the objection without asking Mr. McGohey to state the reasons for his objection or giving us an opportunity to suggest to the Court the reasons why the objection should be overruled."

IV.

On February 3, 1949, during the challenge to the jury system, defense counsel and the Court engaged in a discussion, in the course of which Mr. Gladstein, in an isolent manner, said (Ch. Tr. 2461):

"Now although everybody, one would think, who did not prejudge the matter here——"

and, after interruption, continued (Ch. Tr. 2463):

"Mr. Gladstein: Now, before the Court's interruption I was about to point out that what is important here is the question of your Honor's determinations upon the objections Mr. McGohey has raised, and sometimes even without him suggesting it——

The Court: Yes, maybe I have a right to make a comment from the bench once in a while. It seems probably wrong to you and your colleagues, but it is commonly done, and I have no intention whatever of refraining.

Mr. Gladstein: I wasn't referring to your Honor's comments, because they are always welcome. I was referring to the rulings that you make adverse to the defendants even before the United States Attorney opens his mouth to make an objection. That has happened."

After further colloquy, during which the Court invited a memorandum from Mr. Gladstein in respect to the admissibility of certain proof; Mr. Gladstein continued his reflection on the Court's integrity, as follows (Ch. Tr. 2466-2467):

"Mr. Gladstein: And it is not an easy task to research the authorities and present them to you on the question of the admissibility of this kind of data which is obtained by sampling methods. But if your Honor,

*if there is any possibility of having the effect of those authorities respected* and obtaining a reconsideration of the ruling that your Honor has taken, I will certainly do whatever I can to get that memorandum of law to the Court.

The Court: I try to respect all authorities, those that are controlling and those that are persuasive. I try to do my duty as a Judge. I do not think it is very nice of you to put in that little insinuation, but I take it in good part. And so we will pass it.

Mr. Gladstein: Very well. It isn't half of what I felt like saying, your Honor, as a result of what you said.

The Court: Well, I can well believe that."

V.

On the same afternoon, after hearing lengthy argument by Mr. Gladstein (Ch. Tr. 2483-2489), the Court sustained a Government objection to certain evidence proffered through the witness Wilkerson. After a recess granted at Mr. Sacher's request, Mr. Crockett and Mr. Sacher argued for a reconsideration of the ruling (Ch. Tr. 2490-2501). Continuing the attack of defense counsel upon the Court and completely ignoring the fact that the Court had heard Mr. Gladstein at length before ruling, Mr. Sacher loudly complained (Ch. Tr. 2494):

"I repeat, this is an Alice in Wonderland procedure. We always get the sentence first and then the trial. Now, if we would just get back to ordinary procedure with trial first and sentence afterwards, this might be a little bit more real * * * *".

The Court directed Mr. Sacher to "completely refrain from further argument along this line" (Ch. Tr. 2494). Notwithstanding the direction of the Court, Mr. Sacher

shortly returned to his attack upon the Court, as follows (Ch. Tr. 2500):

> "Is it because the evidence is becoming too devastating for the Government that we must now be circumscribed? This is the telling stuff. Why are we stopped at this point when we proceed definitely to show that the Republican Party vote is the guide to the determination of how many jurors come from a district, and not that impartial selection which the Constitution and the statute require? That is what is at stake in this instance, your Honor, and I submit I don't want to take any more of your time if we are doing nothing to influence you; I don't want to be like the Yankee in King Arthur's Court * * *".

VI.

On February 4, 1949, during the challenge to the jury system and in the course of the direct examination of the witness Marcantonio by Mr. Isserman, the witness was asked to state how long certain low-rent housing projects had been in existence. The Court sustained an objection and told Mr. Isserman that it did not wish to hear argument from him. However, Mr. Isserman proceeded to argue and he was joined by Messrs. Gladstein, Sacher and McCabe. Repeatedly, the Court interrupted counsel stating that it did not desire to hear argument. Nevertheless, counsel continued (See Ch. Tr. 2544-2548). The Court then directed counsel to proceed with the interrogation of the witness (Ch. Tr. 2548). In the teeth of the direction, Mr. Gladstein continued (Ch. Tr. 2548-2549), as follows:

> "* * * since your Honor won't permit me to refer to the authorities, then I refer to a practical suggestion, and that is if instead of consuming time in arguing as to whether or not we have the right to make the simple statement for the record as to what the witness

would say if he were permitted to answer the question to which the United States Attorney has objected, and which objection has been sustained—if instead of doing that we were simply allowed to follow the normal, usual routine procedure that takes place even before juries * * * ".

Mr. Sacher then commenced speaking and the Court stated that it did not desire to hear him at that time (Ch. Tr. 2549). Despite this, Mr. Sacher continued (Ch. Tr. 2549-2550), as follows:

"But you have characterized my conduct as well as that of trial counsel, and I wish to deny it on the record, and I wish to say that your Honor is aware of the fact that there are 40 or 50 newspapers here, and on the threshold of Congressman Marcantonio's testimony you have taken occasion to say that his testimony is being introduced for the purpose of dragging and delaying the trial; and I say——

The Court: Did I say that?

Mr. Sacher: Well, you imply that very broadly. If your Honor wishes to deny it I shall be glad to have the denial. But I got the impression very distinctly that your Honor's observation was made just on the threshold of the Congressman's testimony and that it was designed to color the effect and impression to be given to it, and I do not believe, your Honor, that that is appropriate.

The Court: If you are only trying to provoke me, Mr. Sacher, you are wasting your time."

Shortly thereafter, Mr. McCabe concluded with the following statement (Ch. Tr. 2554):

"Yes, but I say that it seems to me that that is what is in your Honor's mind, and that also may very well

be addressed to someone outside of this courtroom, and I think that the record, if reviewed by some other authority may indicate unusual degree of tolerance in the face of particularly annoying tactics, which I don't think we are guilty of."

VII.

On the same day, while the witness Marcantonio was still being examined by Mr. Isserman, the witness was asked if he had found many persons residing in his Congressional District who were known to him to be of average intelligence. The Court sustained an objection. However, Mr. Isserman proceeded to argue the matter. Finally, the Court sought to close argument, directing Mr. Isserman to take his exception (Ch. Tr. 2621). Nevertheless, Mr. Isserman persisted (Ch. Tr. 2621-2622), as follows:

"Mr. Isserman: I was in the middle of my objection when your Honor interrupted to misconstrue a statement that I made. I said, conditionally——

The Court: I wish you would not say that I do that, to misconstrue.

Mr. Isserman: It seems to me to have been misconstrued.

The Court: That seems an impertinent thing. Mr. Isserman, that seems an impertinent thing. You are an experienced lawyer and you know better than to do that. Now, you lawyers have been at that here for three weeks, perhaps to provoke me—I don't know what the reason may be. But I do know that if you keep it up some day, perhaps now, perhaps hereafter, there will be a time of reckoning. Now, please don't do that.

Mr. Isserman: And I would like now to object to your Honor's characterization of my comment.

Now, the statement that I was making——

The Court: Well, when you charge me with deliberately misconstruing something I regard that as impertinence.

Mr. Isserman: I did not say it was deliberate, your Honor. But I said it seemed to me to be that. But, in any event, what I was saying was this: I said if this were a small community the method of proof, as indicated by the cases, would be to call the persons directly involved. Your Honor has thus far conditionally ruled that your Honor would not allow the calling of those persons who would give the direct evidence on their status."

Mr. Isserman continued his argument and the Court again interrupted to remind Mr. Isserman of the Court's previous direction as follows (Ch. Tr. 2623-2624):

"The Court: Now, Mr. Isserman——

Mr. Isserman: Now, the reason why——

The Court: Let me say something to you. In every judicial proceeding that I am familiar with, and I have had a pretty large experience at the bar, when the Court indicated that it didn't want any more argument on a point the lawyer quietly desisted. If he chose to except he noted his exception and went on to something else. Here, perhaps in an endeavor to wear me out, which it is gradually doing, you keep that up, and you make the argument or arguments just as you are doing now. And I say, as I have said before, that that in my judgment is not the proper conduct of an attorney. It is extremely wearing on the Court in a trial of this kind. I suppose it will wind up by bringing me down. I hope it won't. I may have the strength to go on, and I hope I shall. But I tell you—stop it.

Mr. Isserman: I would like to take exception to your Honor's remark as an improper characterization of my conduct.

I would like to state my—complete my objection for the record if I may.

The Court: You insist on going ahead again, and all I can do, as I do not intend to make a rumpus about it, is to advise you again—please desist; and then, if you insist upon going on, why, you must take the consequences, whatever they may be.

Mr. Isserman: May I state my objection for the record?

The Court: You may not."

Instead of proceeding with the interrogation of the witness, Messrs. McCabe, Sacher and Crockett carried on the argument. The Court told Mr. McCabe that argument was unnecessary (Ch. Tr. 2625), and then Mr. Sacher, angrily shouting, offered his "observation" to the Court (Ch. Tr. 2626-2627). Mr. Crockett thereupon took up the argument and failed to desist until the Court warned him that his insistence on going on was in defiance of the Court's direction (Ch. Tr. 2632).

VIII.

The jury challenge commenced on January 17, 1949. On February 11th the Court determined that counsel for the defendants had taken almost four weeks to put in evidence which could have been adduced in no more than three or four days (Ch. Tr. 3291) and accordingly the Court concluded that defense counsel had engaged in a "deliberate effort here to make a mockery of justice" (Ch. Tr. 3290). At the close of court on that day, the Court directed defense counsel to submit a statement showing what they proposed to prove in the remainder of the challenge and how they proposed to prove it (Ch. Tr. 3344-3345). The statement was submitted on February 14th (Ch. Tr. 3346) and was found insufficient (Ch. Tr. 3415). At this juncture, the Court in the exercise of its discretion as to the order of

proof, refused to hear further testimony at that time on behalf of defendants in connection with their challenge to the jury system, and directed that the Government proceed with its proof. Counsel for defendants vociferously objected and, in the course of argument, Mr. Sacher, in an insolent manner, said (Ch. Tr. 3420):

> "Now, I must in all candor say, your Honor, that it is very difficult for us among the defense counsel to believe that the United States Attorney was caught unawares in the request or the direction which the Court made to him to proceed with his proof on an hour and half's notice——"

Other counsel proceeded to object, which led the Court to remark that the way the hearing was conducted was such as he never thought he would see in a court of justice (Ch. Tr. 3433). Thereupon, Mr. McCabe in a sarcastic tone said (Ch. Tr. 3433):

> "I will agree, your Honor, on that last point; the way this case has been conducted is one which I certainly hoped that I would never see in a court of justice.
>
> The Court: You mean the way it has been conducted by me, I take it.
>
> Mr. McCabe: I mean that exactly."

The Court stated (Ch. Tr. 3434):

> "I have been subjected to every kind of vituperation here and you might just as well tell me how I am going to be reversed and all that. It remains to be seen what will be done by higher courts, and your telling me about that isn't going to affect my judgment. I am trying my best here to rule justly, to rule impartially, to protect the rights of these defendants despite the conduct of their counsel, and I shall continue to do that."

Mr. McCabe followed this with the statement (Ch. Tr. 3434):

> "I rise simply to say—to except to your Honor's characterization that anything the defendants' attorneys have done is sabotage. Sabotage there has been, but as I say I think it has been a sabotage of the entire system of justice in this court, and I say that we are the only ones who seem to be interested in that."

Thereupon, Mr. Gladstein jumped to his feet and, angrily advancing toward the bench, he said in a truculent manner (Ch. Tr. 3434-3435):

> "Well, now may I ask your Honor this: does your Honor really mean that the record shall indicate that it is a protection of the rights of these defendants for your Honor to say when I offer a piece of evidence, 'Mr. Gladstein, that would be material, that would be relevant, that would help to prove your case, but I am not going to let you put it in evidence because I don't like the way you and your colleague lawyers have been behaving?
>
> The Court: Did I say that?
>
> Mr. Gladstein: In effect, yes, because you have absolutely rejected and you have prevented me from introducing evidence——"

## IX.

On February 18, 1949, during the defendants' challenge to the jury system, Mr. McCabe diverted the course of his argument to remark (Ch. Tr. 4116-4117):

> "I would like to say to your Honor that I really have come to believe that the constant repetition by your Honor at intervals which are almost as regular as the tolling of Big Ben—and I mean nothing personal in

the allusion—or the eruption of Old Faithful out in Yellowstone Park, or wherever it is—these come at stated periods. I think you can pick 11.20 and 3.20 when these statements come that we are delaying; we are doing nothing; your Honor has seen nothing in the record. I say, I don't want——

The Court: What is the point of those times, of those particular times?

Mr. McCabe: 11.30 I think is the deadline for the afternoon papers, your Honor, and I think around 3.20 is the deadline——"

The Court (Ch. Tr. 4117):

"Well, that is something I had no idea of, and I must say you have got an ingenious mind to suppose that something was said for such a purpose. I think you ought to be ashamed of yourself."

See also Tr. 6980.

X.

On February 28, 1949, during the challenge to the jury system, Mr. Gladstein asked the Court to reconsider its ruling with respect to a document which he had sought to have admitted into evidence. The Court adhered to its prior ruling and stated it did not desire to hear further argument (Ch. Tr. 4559). Mr. Gladstein refused to heed the direction of the Court, as follows (Ch. Tr. 4560-4562):

"Mr. Gladstein: But, your Honor, *upon the pretext that this is a confidential document,* the one that I am asking about, the one that was written by this witness, *you are preventing me from showing* without any question the final proof of the corruption of the system here in so far as they placed in charge of it a man who was the director of a dozen corporations, who——

The Court: Mr. Gladstein——

Mr. Gladstein: May I finish, Judge?

The Court: I consider your language offensive and not fitting for an officer of this court to use when you speak of a ruling by the Court as done under a pretext, and use such other language as you used there. You must know that you are doing something that you should not do, and I direct you to desist.

Mr. Gladstein: Your Honor, I ask that you consider the law that applies to this question because——

The Court: I heard what you said.

Mr. Gladstein: Do you refuse to have a memorandum of law submitted to you?

The Court: And I consider the language offensive.

Mr. Gladstein: Do you——

The Court: And you know, you know that it is, but of course it may be pleasing to some of the people.

Mr. Gladstein: Well, that is not—I have never said anything——

The Court: But that is an additional reason why you should not do it.

Mr. Gladstein: I have never said anything for the purposes of pleasing anyone here but for the purpose of trying to put in evidence and to persuade your Honor to do what I think the law requires.

The Court: Well, you are not going to provoke me, so you might as well stop doing that.

Mr. Gladstein: I want to make an offer of proof concerning this letter which, according to the witness' statement, is in this building and readily available and which, by the way, Mr. Duncan, it was called for in the subpoena that was served on you—isn't that so?

The Court: I direct you not to make this one. It is already sufficiently evident in the case what the paper is and what your claims about it are, and mere repetition of it will only serve to use up your time that you can employ to better advantage.

Mr. Gladstein: All right. Let the record show that it is a letter written in May, 1942 by Mr. Duncan, the present witness, and let the record further show that I called for that letter and for the letter or questionnaire in which it was a response, to which it was a response——

The Court: Now, Mr. Gladstein, you have again done what I have told you not to do.

Mr. Gladstein: I want the record to show that I had the subpoena served on this witness. Can it now show that?

The Court: I understand what you want, but the accumulation of these acts of disobedience to my rulings is something that concerns you, and I hope that you won't keep at it any more."

XI.

On the same afternoon, shortly after the foregoing incident, Mr. Gladstein offered in evidence the 1949 edition of "Poor's Register of Directors," consisting of 3200 pages. The Court stated that it would hear Mr. Gladstein on the question of the relevancy of the exhibit. After hearing a statement from Mr. Gladstein, the Court sustained the objection to the book. Thereupon Mr. Gladstein, in a sarcastic and impertinent manner, said (Ch. Tr. 4590):

"I thought when you heard the facts you would, Judge."

XII.

On March 1, 1949, in the course of the cross-examination of the witness John Whittier Darr, Jr., the witness was asked by Government counsel how long he had been a member of American Youth for Democracy. Mr. Gladstein objected to the question as incompetent, irrelevant and immaterial. The Court overruled the objection, but Mr. Gladstein continued to argue (Ch. Tr. 4781).

As soon as Mr. Gladstein finished, Mr. Sacher and Mr. Isserman interjected sarcastic comments, as follows (Ch. Tr. 4781):

> "Mr. Sacher: May I respectfully say to your Honor that membership in the American Youth for Democracy has no more bearing on the credibility of this witness than the fact that Judge Knox is director of two of the biggest corporations in this country."
>
> "Mr. Isserman: Or that your Honor is in the Social Register."

The Court again stated that it overruled the objection and directed the witness to answer the question and said to the witness he should bear in mind that he should not make a speech as he had done a moment ago. Thereupon Mr. Gladstein said (Ch. Tr. 4782):

> "Let the record show my objection to the Court's gratuitous and improper characterization of the witness' testimony, as an effort to make a speech——."

## XIII.

On April 4, 1949, in the course of the cross-examination of the witness Budenz, the United States Attorney objected to a line of questioning by Mr. Gladstein; who was directed by the Court to turn to something else (Tr. 2296). Mr. Gladstein persisted in arguing the matter with the Court. The Court again directed Mr. Gladstein to turn to another subject and told him that when a lawyer persists in arguing about the same thing the only inference is that the lawyer is trying to leave the impression that the facts recited in questions asked by the lawyer and ruled out actually represent the truth. Mr. Gladstein thereupon made the following statement in the presence of the jury (Tr. 2297):

> "They do represent the truth and I intend to show that they do. Let me put it this way——"

XIV.

On April 5, 1949, during the cross-examination of the witness Louis F. Budenz, the following transpired (Tr. 2479-2480):

"Q. Can't you say certainly whether it was in August or not?

Mr. McGohey: I object.

The Court: Overruled.

It is puzzling me as to what difference it made as to what date he made the speech but——

Mr. Sacher: When this witness undertakes——

The Court: Please don't argue. I allow the question.

Mr. Sacher: When your Honor makes a provocative remark and your Honor says you don't know what difference it makes——

The Court: I strike out your remark about my making a provocative remark. I did not make a provocative remark and I consider your response insolent. Now you please stop that. I am not in the habit of making provocative remarks. I am trying to do my best to administer justice.

Mr. Sacher: And I am trying to defend my clients.

The Court: I will not have insolence from the bar.

Mr. Sacher: I am trying to do my best to defend my clients.

The Court: You please refrain from further comment and frame your next question. I am used to having respect from the bar.

Mr. Sacher: I wish to say to your Honor that I don't want to show you any disrespect.

The Court: You reframe your question.

Mr. Sacher: And you know it.

The Court: Oh, yes; I know it. I sure do.

Mr. Sacher: And I think it is a reciprocal objection. I think lawyers who are defending their clients for their liberty should not be treated as though they were dogs in the courtroom either.

The Court: That is an insolent remark and I strike it out, the statement that you have been treated like a dog. I don't see how you dare speak that way.

If you can control yourself, please ask the next question.

Mr. Sacher: I am trying, your Honor."

XV.

During a session of the court on April 7, 1949, while a Government witness was under direct examination, Government counsel invited the Court's attention to the fact that a Mr. Simon Gerson, who regularly had been seated at defense counsel's table, was circulating certain papers to representatives of the press in the courtroom, whereupon the following colloquy took place (Tr. 2750-2751):

"Mr. Gordon: I see Mr. Gerson passing out some papers to the press section, your Honor.

Mr. Sacher: Now that is absolutely wrong, your Honor. I asked Mr. Gerson to be good enough to speak to someone for me. This is another instance of surveillance.

The Court: Well, if Mr. Gerson is passing out press releases in the courtroom, please stop it.

Mr. Sacher: Well, there are no press releases.

The Court: All right. Then that settles it, that is the end of it.

Mr. Sacher: But it is uncomfortable, your Honor, to be under observation. Can't we move freely in the courtroom without having our movements remarked upon?

The Court: Well, if you haven't been moving freely in the courtroom, Mr. Sacher, then my eyes and ears have been deceiving me.

(Mr. Gordon hands paper to the Court.)

The Court: Now let us see what this paper is that Mr. Gordon produces.

(After examining) Why, it is a press release—doing just what you said was not being done.

Mr. Sacher: I asked Mr. Gordon—Mr. Gerson to see someone for me on the outside, and it had nothing to do with press releases, your Honor.

The Court: Well, I have in my hand a press release which it appears was just handed out by him and which you deny.

Now I don't want to get into any collateral controversies here and we will just let it rest with this direction: I do not want any press releases handed around here in the courtroom or anything of that kind. Now this isn't a propaganda place here. This is a court of justice where people are in trial and I direct that no more of that be done."

The press release which was retained by the Court bears the pictures of the defendants and was captioned as follows:

"TRIAL OF THE TWELVE

401 Broadway—Room 1601-02-
New York 13, N. Y.—
Walker 5-2010

Public Relations Office
For Release
April 7, 1949"

The records of the Clerk of the Court reflect that on January 17, 1949, Messrs. Sacher, Gladstein, Isserman,

Crockett and McCabe notified the Clerk that for all purposes relating to any matter in the trial the address of each is 401 Broadway, Room 1602, New York 13, New York, and that the office telephone number is WAlker 5-2010, the same address and telephone number which appeared on the press release referred to above.

XVI.

On April 19, 1949, in the course of the direct examination of the witness Charles Nicodemus, Mr. Gladstein objected to a question which had not yet been completed, whereupon the following transpired (Tr. 3649-3650):

"The Court: Well, it seems to me, Mr. Gordon, there is something in that. Why don't you ask him a question without covering the matter of the other testimony? Is there something you want to direct his attention to?

Mr. Gordon: Yes, I want to ask him whether he had received any instructions.

Mr. Sacher: I object to this, your Honor, because it is quite obvious——

Mr. Gordon: Why does Mr. Sacher shout me down?

Mr. Sacher: Oh, Mr. Sacher shouting this little boy down.

The Court: Now, Mr. Sacher, you are getting back into your old form.

Mr. Sacher: Your Honor, I have consistently been in this form and no observations from the bench will change that form.

The Court: You never can tell what will happen.

Mr. Sacher: With your Honor up there I suppose that is true.

The Court: I might possibly get control of my courtroom. I think I shall."

XVII.

On April 22, 1949, in the course of the direct examination of the witness Charles Nicodemus, the Court sustained an objection made by Mr. Gladstein to a question asked by Government counsel. Mr. Sacher then arose and asked the Court to admonish Government counsel not to ask questions which were leading. The Court pointed out that the objection had been sustained. Notwithstanding that Mr. Sacher already had stated the ground for his motion, Mr. Sacher then asked the Court whether he could say why he wanted the Court to rebuke Government counsel, but the Court refused permission. Mr. Sacher then remarked in a sarcastic manner (Tr. 3680):

> "I see, only Mr. Gordon and Mr. Nicodemus may speak."

XVIII.

On April 22, 1949, during the cross-examination of the witness Charles Nicodemus, Mr. Sacher asked the witness if he had pleaded guilty to an indictment for carrying concealed weapons. The Court, expressly stating that it understood that counsel was bringing out a conviction of crime, permitted him to proceed with the examination on this subject. Mr. Sacher then knew, on the basis of the entries reflected on the certified copies of the judgments in his possession, that the witness had been found not guilty on two separate charges, but he did not disclose those facts to the Court. Instead, he continued the cross-examination on this subject, knowing that the Court was permitting the line of examination on the theory that evidence concerning convictions for crime was being elicited. When Government counsel were permitted to examine the judgments and sought to inform the Court of the fact that the witness had been found not guilty, Mr. Sacher exerted every effort to prevent the disclosure of these facts to the Court (Tr.

In the course of redirect examination of the witness the Court reiterated that the judgments disclosed that the witness had been found not guilty (Tr. 3765-3766), whereupon the following occurred (Tr. 3767):

"Mr. Gladstein: And also, in connection with your Honor's statements that you will continue to tell the jury that the case in which Mr. Nicodemus was involved turned out as not guilty, would you be good enough to add, if you tell the jury that, that it was no doubt because Mr. Nicodemus was innocent that the Court imposed a sentence of $140?

The Court: You see, Mr. Gladstein, it is the first experience I have ever had either at the bar or at the bench where counsel were so brazen, where again and again they argued over the Judge's shoulder to the jury in what seems to be a deliberate attempt to induce the jury or some member thereof to disregard the Court's instructions. I have heretofore had occasion to tell counsel that that is treading on dangerous ground, and I hope it will not be repeated."

## XIX.

On April 25, 1949, in the course of the cross-examination of the witness Garfield Herron by Mr. Gladstein, he offered a book in evidence, to which objection was made by the Government. After argument, the Court ruled that it would not admit the entire book, but, if there were some portion of it that was relevant, the Court would allow that portion in evidence (Tr. 3928-3932). At this point Mr. Sacher arose and argued that it was necessary to have the book in its entirety in evidence, and he continued the argument until the Court directed him to desist (Tr. 3936). Immediately, Mr. Dennis arose and the Court stated to him that it did not desire any further argument, saying that further talk would not be for the purpose of persuading the Court in

connection with his ruling, but for other purposes (Tr. 3937). Mr. Sacher thereupon arose and objected to the statement. The Court interrupted him, saying that he was not going to have the trial carried on for propaganda purposes. Mr. Sacher thereupon stated (Tr. 3937):

> "I object to that. That is what the prosecution is doing. We are trying to prove the truth here and we are being stopped from proving the truth. That is what is happening."

Following this, Mr. Dennis arose and stated he would like to make a brief observation. The Court again stated that it did not desire to hear further argument (Tr. 3937-3938). Nevertheless, Mr. Dennis commenced to make a statement. The Court interrupted, asking Mr. Dennis if he realized the Court had directed counsel not to argue (Tr. 3938). Despite this, Mr. Dennis continued, and the following occurred (Tr. 3938-3940):

> "Defendant Dennis: I would like to make one brief observation, your Honor, because this is not a small question. I would like to remind the Court that we eleven defendants are not charged——
>
> The Court: You realize I told you not to do this, don't you?
>
> Mr. Dennis: I understood I might make a brief observation.
>
> The Court: But you want to go on just the same. Now I don't think you are helping yourself by doing that, but that is your lookout.
>
> Defendant Dennis: I would, briefly, like to place the following cardinal question. We eleven defendants are not charged, as your Honor intimated, charged with conspiring directly or indirectly with attempting to or take any steps to overthrow our Government by force and violence. We are charged with an alleged

conspiracy to organize the Communist Party, which the prosecution claims would advocate and teach the necessity and the duty to overthrow the U. S. Government by force and violence, and that is to say we are charged with exercising our inalienable rights of free speech, free press and free assemblage, and——

"The Court: I suppose you are just daring me to do something to you now but I am not going to do it.

You gentlemen may be just as disorderly, just as disobedient, just as disrespectful as you choose to be, and you will not goad me into doing something which may prove only a source of difficulty in the trial.

Now I tell you again to stop."

Following the statement of the Court, Mr. Crockett arose and made an objection, and Mr. Dennis, who had remained on his feet, continued his statement, saying (Tr. 3340):

"And the final remark, your Honor, is that we defendants intend, as we are duty-bound to do, to show really what we have advocated, what——"

At this point the Court found it necessary to take an adjournment for five minutes to prevent Mr. Dennis from continuing to flout its direction.

XX.

On May 2, 1949, in the course of the cross-examination of the witness Angela Calomiris, the following transpired (Tr. 4471-4472):

"Q. Now you have said that in the 1947 course the first one of the subjects on which you studied at that course was capitalism and the class struggle, involving the nature of capitalism.

Mr. Wallace: Objection.

The Court: Sustained.

Mr. Gladstein: That is preliminary to a question. I haven't asked a question yet, your Honor.

The Court: All right.

Mr. Gladstein: It gets so that even before I ask a question it is sustained, the objection to it.

The Court: Now that I consider a distinct impertinence——

Mr. Gladstein: I did not ask a question.

The Court: —and just an accumulation of what you have been doing here. You say it gets so that the Court rules before you have asked a question, you intimate that I am so prejudiced here that I don't want to be fair and am not fair. Now you will please stop that. You are not helping yourself or your clients by doing it, I think."

XXI.

On May 4, 1949, in the course of the direct examination of the witness Thomas Younglove, the Government offered an educational outline in evidence. This was near the close of the day's session and Mr. Sacher requested a recess to afford defense counsel an opportunity to examine the exhibit. The Court asked if it would not be practical to go to some other subject, or if there were not some books which the witness would be called upon to identify. When Government counsel replied that he could not proceed to another subject, but that there were books that were to be identified, Mr. Sacher observed that if the validity of the introduction of any of the books depended upon the introduction of the proffered exhibit he would feel bound to raise an objection.

The Court then stated that if certain books were to be identified it could see no harm that could come to the defense. Thereupon Mr. Crockett arose and objected to the Court's anticipation of the nature of additional proof that the Government might offer. Although the books mentioned

by the Court were "Foundations of Leninism" and the "History of the Communist Party of the Soviet Union," both of which had been previously admitted into evidence and identified by numerous witnesses, he suggested that the Court was improperly familiar with the Government's evidence before it was adduced, as follows (Tr. 4826):

> "I don't think it is customary for the Court to show such familiarity with the possible course—with proof that the Government might present. That is the gist of it."

XXII.

On May 19, 1949, shortly after the luncheon recess, the Government rested its case and the Court set aside the balance of the day for the hearing of any motions the defense desired to make.

Instead of making their motions, defense counsel lengthily argued for an adjournment. During the argument, the following occurred (Tr. 6046-6048):

> "Defendant Dennis: I rise, first of all, your Honor, to protest most vigorously against the outrageous and arbitrary ruling which you have just made.
>
> The Court: Which ruling is that?
>
> Defendant Dennis: The ruling in respect to denying the defense even a reasonable opportunity to present its motions and the grounds for the motions.
>
> The Court: You see, you are not familiar with these legal matters, Mr. Dennis.
>
> Defendant Dennis: I am familiar, your Honor, with a number of things on which I would like to speak very briefly.
>
> The Court: Well, go ahead. This is your time.
>
> Defendant Dennis: I must say, the first thing that must be noted in respect to directing counsel to conclude any arguments or proffer any motions by 4:30 this

afternoon makes a mockery of justice, because, by this ruling and by the injunction that defense must produce its first witness by tomorrow morning, your Honor has stated, in effect, that irrespective of what motions we offer that you cannot be convinced that there is no prima facie case.

The Court: Let me ask you a question——

Defendant Dennis: And, moreover, that you have prejudged this case.

The Court: Let me ask you a question: Do you conceive it possible that the proof in support of a given charge might be so clear that argument of its legal insufficiency might not be helpful? Does that strike you as possible as a theoretical concept?"

Subsequently the Court asked Mr. Dennis what, in his opinion, was lacking in the proof adduced by the Government necessary to sustain a charge. To this Mr. Dennis replied (Tr. 6050):

> Your Honor, in respect to that, the first thing I would say is that we in the United States should never permit what is being perpetrated here, where you have a federal police interpretation of what we defendants think and believe in."

Thereafter, in the course of his argument, Mr. Dennis made the following comment (Tr. 6053-6054):

> "And it is highly reminiscent in many respects of the Reichstag fire trial and of the efforts of reactionaries in this and other countries to outlaw the Communist Party as a prelude to trying to drag our nation along the path of war and fascism. And however much you may think or agree or disagree with this I would strongly urge as a matter of most elementary justice and not to deprive the defense of some of the remnants

of due process of law that we should be afforded an opportunity of a few days at least to prepare our motions, our argumentation."

Following this last statement, Mr. Crockett arose and the following occurred (Tr. 6054):

"Mr. Crockett: If the Court please——

The Court: Yes, Mr. Crockett.

Mr. Crockett: —I assume perhaps correctly that it would be to no avail to ask the Court to grant a reasonable time to prepare——

The Court: It would be without avail to ask me to give any time for the making of these motions. They are to be made this afternoon.

Mr. Crockett: That is why I made the assumption.

The Court: Well, you put that word 'reasonable' in there. I don't (think) the request for any time now is reasonable. That is why I denied the application.

Mr. Crockett: I think, your Honor, that the defendants, as well as myself, and other counsel began this trial with certain illusions that have been shattered because of the prejudicial actions of the Court."

When the Court suggested that Mr. Crockett should be more temperate, the following occurred (Tr. 6055):

"Mr. Crockett: I suggest that this latest ruling of the Court merely confirms all of the prejudicial rulings that have been made in the course of this trial. I suggest that during the course of this trial it has actually been possible and I have heard spectators making the Court's rulings before the Court himself made the ruling.

The Court: It is very interesting.

Mr. Crockett: Because the Court's bias was so obvious that it was possible——

The Court: That is an insulting comment you are making, Mr. Crockett, a very insulting comment."

XXIII.

On May 24, 1949, during the direct examination of the witness John Gates, which was conducted by Mr. Sacher, the Court sustained an objection made by the United States Attorney to a question asked of the witness, inquiring whether he ever had to pay the fine or serve the sentence imposed in connection with the witness' conviction on a certain charge. The Court cut off an attempted argument by Mr. Sacher in opposition to the ruling with the direction that it did not desire argument on the matter. Thereupon, Mr. Gladstein interjected a statement which (1) wilfully misstated the evidence by referring to the "conviction" of the witness Nicodemus in the presence of the jury when, in fact, he knew that Nicodemus had been found not guilty and that the Court had so ruled; (2) improperly characterized the Court's correction of the injustice to the witness Nicodemus; and (3) insinuated that the Court was guilty of impropriety and partiality in sustaining the objection. The incident was as follows (Tr. 6271-6272):

"Mr. Gladstein: May I interrupt, your Honor, to object to the Court's ruling that prevents the establishment by testimony of the ultimate outcome of this matter, and I submit that a strange contrast is afforded by the Court's insistence, for example, to which we have no objection—but the Court's over-insistence on pursuing to its final conclusion the arrest and conviction of the witness Nicodemus, concerning which it would seem to me——

The Court: You will please desist from further argument, Mr. Gladstein.

Mr. Gladstein: Very well."

XXIV.

On May 25, 1949, in the course of the direct examination of the witness John Gates, which was being conducted by Mr. Sacher, an article written by the witness in 1938 was offered in evidence. Objection was made by the United States Attorney, which objection was sustained by the Court. Thereupon the following occurred (Tr. 6460-6462):

"Mr. Gladstein: Your Honor, may I ask that the Government be required to state the grounds for its objection to a document that this man wrote twelve years ago before he ever knew that there would be an indictment and when he expressed his political views on the very issues involved in this case? May I know what the legal ground is by which a man is prevented from showing his intentions, his state of mind——

The Court: You remember my instruction about these arguments?

Mr. Gladstein: I desire to ask the Court to require the Government to explode this mystery whereby with the mere words 'I object' they can shut off the right of a man to show——

The Court: You may think that this matter of argument is helpful. It is certainly not helpful to me. Now you have requested, and you could have requested without those comments and that argument that the Government be required to state the grounds of its objection. That application is denied.

Mr. Gladstein: Your Honor, we have been sitting here for months——

The Court: Now please don't start this argument over again.

Mr. Gladstein: May I——

The Court: I have no desire to hear it. If you have some motion, make it. If you have some objection, state it and I will rule on it.

Mr. Gladstein: Well, I do object to a ruling which prevents a man from summoning to his defense the deeds and the acts of his life committed long before there was any question about it——

The Court: I do not really think, Mr. Gladstein, you have any right to proceed with that form of argumentative matter when I have forbidden it. Now you have already got a very substantial record of disobedience here. You may have an additional record now if you choose to go on.——

Mr. Gladstein: I have no desire to disobey the Court's admonitions.

The Court: But you have.

Mr. Gladstein: I do have a desire, your Honor, to bring before the jury the opening pages of the book——

The Court: Well, I think, Mr. Gladstein, this sort of argument is the very sort of thing that you are not entitled to bring before the jury and I forbid it.

Now as I said before, if you choose to pile up the record of these things against yourself, you may go on.

Mr. Gladstein: I take exception to the Court's remarks.

The Court: Otherwise you will sit down.

Mr. Gladstein: I take exception to the Court's remarks.

The Court: Very well."

XXV.

On May 26, 1949, in the course of direct examination of the defendant John Gates by Mr. Sacher, objection was made to a question asked of the witness, and was sustained. Mr. Sacher then asked the Court for the theory upon which the objection was sustained. The Court replied that it did not desire argument. Mr. Gladstein arose and asked the Court to inquire of the United States Attorney as to what legal grounds the United States Attorney urged

in support of his objection. The Court refused to do this. Mr. Sacher then put another question to the witness, to which objection was made and sustained. Mr. Sacher angrily stated (Tr. 6532):

> "I don't think there is a soul in this courtroom who knows what the words 'Past sins must be paid for now' mean unless this witness is permitted to say what he was talking about.
>
> The Court: Now——
>
> Mr. Sacher: And what is the use of laying it before the jury?
>
> The Court: —you realize that your action now is deliberately contemptuous?
>
> Mr. Sacher: It is not deliberately contemptuous. I am just bewildered, your Honor.
>
> The Court: I have told you not to argue these matters and I really am quite at a loss to understand why you so flagrantly and deliberately and persistently disobey my instruction. Probably it is because I don't shout at you, but I don't like to do that."

## XXVI.

On June 2, 1949, in the course of the direct examination of the witness John Gates, which was being conducted by Mr. Sacher, a pamphlet written by William Z. Foster was offered in evidence and objection by the United States Attorney was sustained by the Court. Thereupon, Mr. Gladstein moved that the Court strike out testimony of all Government witnesses dealing with the claim that the Communist Party or its members taught and advocated that force and violence should be used in the event that the United States became involved in a war. This motion was denied by the Court, but Mr. Gladstein continued his argument. The following then occurred (Tr. 6838):

"The Court: You know, Mr. Gladstein, that I have indicated my desire not to hear arguments unless I desire them.

Mr. Gladstein: I do, your Honor, but I thought that that was limited simply to hearing argument. Now it seems to me, and I submit, that the Court is now making it plain that it no longer wishes to hear evidence from the defendants, and that began to be true when the defense began to put in its case."

XXVII.

On June 3, 1949, in the course of the cross-examination of the defendant John Gates, he refused to answer a question after being directed to do so by the Court, and he was sentenced for contempt. Immediately upon the pronouncement of the judgment of contempt, Messrs. Gladstein, Sacher, Crockett, Isserman and McCabe, and the remaining ten defendants, simultaneously arose in the courtroom. The defendant Henry Winston and the defendant Gus Hall, each taking several steps past the end of the counsel table and toward the bench, began in a disorderly and threatening manner to shout at the Court in loud, angry voices. They were adjudged guilty of contempt for their misconduct.

The situation at that time became so serious that it was necessary to send for additional Deputies Marshal, who were then in other courtrooms in the building, to assist in restoring order and to prevent any further incidents in the courtroom.

The Court suggested to Mr. Gladstein that it would be "prudent if the defendants resumed their seats." Mr. Gladstein rejected the Court's request, saying (Tr. 6975), "Well, your Honor, may I first have a ruling on the right of the witness to complete the record of his invocation of his rights under the Fifth Amendment," and continuing to argue thereafter. Mr. Gladstein did not instruct his

clients or any of their co-defendants to take their seats, and the defendants gave no heed to the Court's direction. Messrs. Sacher and Isserman also made statements to the Court, but neither of them made any attempt to assist the Court in restoring order in the courtroom, nor did Messrs. Crockett and McCabe. After the defendant Dennis had made statements to the Court, he turned to his co-defendants and stated that he urged "upon my co-defendants that they at this time do not speak—they can act as they see fit. I urge them not to call for any provocation" (Tr. 6977). Only then did the ten co-defendants resume their seats in the courtroom and order was restored.

XXVIII.

On June 7, 1949, Mr. Sacher objected to a question asked by the United States Attorney during the cross-examination of the defendant John Gates. Despite the fact that the Court had frequently in the past directed counsel not to argue without leave, Mr. Sacher commenced arguing, saying (Tr. 7123):

> "I should like to observe that the defendant is being tried——"

The Court interrupted him with the suggestion that he desist. Nevertheless, Mr. Sacher in a loud voice commenced to shout (Tr. 7123):

> "Well, your Honor, I submit that——"

When the Court directed Mr. Sacher to stop shouting, Mr. Sacher said (Tr. 7123):

> "I am not shouting and I resent the filling of the record with statements about my shouting when all I am doing is speaking vigorously, and that, I think, is part of the function of an advocate."

The Court commented that Mr. Sacher was one of the most vigorous speakers it had ever heard. Mr. Sacher continued to argue, saying (Tr. 7123-7124):

> "That may be, but I say to your Honor that I resent this trying the defendant for things that came 15 years or 18 years ago and I submit that what he is being tried for is what is charged in the indictment between the years April 1, 1945 and July 20, 1948, and I also wish to say to your Honor that I don't think——"

He finally subsided, but only when the Court advised him that he was proceeding in direct and wilful disobedience of the direction of the Court.

## XXIX.

On June 9, 1949, the defendant John Gates was asked on cross-examination whether he had ever been convicted of a crime. He commenced to shout, saying (Tr. 7363):

> "I am not making a long explanation. Let me answer. I did testify on direct examination—why don't you read the transcript? This is repetitious. I testified on the direct examination as to what I was convicted of, and Mr. McGohey knows it very well——"

The United States Attorney then requested that the record show that the witness had been shouting when he made the last answer. Thereupon Mr. Sacher stated (Tr. 7364):

> "May the record show that the witness is being crucified unnecessarily with interrogations to which he has truthfully answered already."

When the Court directed that this remark of Mr. Sacher be stricken, Mr. Crockett arose and, in the presence of the jury, said (Tr. 7364):

> "May the record show that this is the fifth day of the witness' imprisonment in jail."

The Court remarked that it would not be provoked into an answer the Court might later regret. Mr. Sacher then stated (Tr. 7364):

> "I object to that. We are the ones who are being injured and we are not being permitted to complain of the injury that is being inflicted on us. I think in the present state of the record, your Honor, it ill becomes anybody here to claim any martyrdom."

## XXX.

On June 30, 1949, in the course of the cross-examination of the defendant Gilbert Green by the United States Attorney, he was interrogated concerning a series of false statements in an application which he had prepared. When pressed for an answer concerning one of the false statements, the witness became evasive. An objection by Mr. Isserman was overruled. Mr. Sacher, who did not represent the witness and who was not participating in the examination of him, arose and interjected, as an attempted diversion (Tr. 8895):

> "I would like to quote the Court and say 'This is pretty small pickings'."

## XXXI.

On August 1, 1949, the witness Yolanda Hall, called by the defense, was asked a question on cross-examination and then the following transpired (Tr. 11,031):

"Mr. Isserman: I object to that as argumentative. It is not based on the facts in evidence as testified by this witness.

The Court: Mr. Isserman, do you remember my admonition, that when counsel objects, counsel is merely to state 'I object'? You have violated it several times this morning. Did you forget?

Mr. Isserman: I am reminded of it now. It is a habit that goes back over 25 years. It is hard to give up that habit, which your Honor has undoubtedly engaged in yourself.

The Court: Every time you do that your action is contemptuous and direct, I think, wilful and deliberate disobedience of my command.

Mr. Isserman: I must object to your Honor's characterization of my conduct.

The Court: I have heard counsel for the defense here again and again give various excuses, say they have forgotten or it was inadvertent, and I have warned them again and again. I now say that such conduct must be and I find it to be wilfully and deliberately done and contemptuous.

Mr. Isserman: I must object to your Honor's finding.

The Court: Very well."

Not much later, during the cross-examination of the same witness, at the same session of the court, she refused to answer a question (Tr. 11,070). At this juncture the following occurred (Tr. 11,071-11,073):

"The Court: Do you remember the oath you took when you were sworn as a witness?

Mr. Isserman: I object to that question.

The Witness: Yes.

The Court: Overruled.

Q. Now, before you——

Mr. Gladstein: May I object to the Court's—the inference from the Court's statement?

The Court: Your objection is noted. It is overruled.

Mr. Gladstein: Because the Court's statement has nothing to do with that.

The Court: I will hear no argument.

Mr. Gladstein: I want to note my objection on the record.

The Court: You have noted it. Sit down.

Mr. Gladstein: I object to that and ask your Honor to admonish the jury——

The Court: Will you sit down or must I call an officer to put you down? I will have no more interruptions on cross-examination. Your field day is over.

Mr. Gladstein: I resent your Honor's remarks as——

The Court: Mr. Marshal, will you please—all right, I see you sat down by yourself.

Mr. Isserman: May I object to your Honor's remarks and ask for a mistrial on the basis of your Honor's remarks?

The Court: Denied.

Defendant Dennis: Your Honor——

The Court: I want no argument, Mr. Dennis.

Defendant Dennis: May I make an inquiry of the Court?

The Court: You may.

Defendant Dennis: I would like to know whether the ruling and remarks of the Court are directed to the defendants and counsel as to prejudice our case before the jury?

The Court: They are not. I have heard enough from Mr. Gladstein. I have heard enough interruptions and suggestions to witnesses and so on, and I will have no more interruptions of cross-examination. Now, that is final and that is over for this trial.

Mr. Sacher: I wish to object to your Honor's remarks as being wholly improper and unjustified and designed to prejudice the jury against the defendants.

The Court: Your motion is denied.

Defendant Dennis: I just wish to state and very emphatically, your Honor, that for all intents and purposes the defendants are deprived of counsel and deprived of what is set forth in the Sixth Amendment to the Constitution."

## XXXII.

On August 3, 1949, during the direct examination of the witness Geraldyne Lightfoot by Isserman, she was asked a question to which the Government objected. The Court undertook to elicit the information sought by a direct question. In order to forestall an answer, Messrs. Isserman and Gladstein provoked a disorderly disturbance and succeeded in preventing an answer to the question, as follows (Tr. 11,269-11,274):

"The Court: Mrs. Lightfoot, in this matter of the strategy of the workers, did you discuss the dictatorship of the proletariat, imperialism, and just and unjust wars, and things of that kind, or were they not mentioned?

Mr. Isserman: I object to the question.

The Court: Overruled.

The Witness: Under topic 3—under topic C——

The Court: You will answer that question yes or no or state that you cannot answer it.

Mr. Gladstein: I object to the Court's tone and manner of badgering the witness.

The Court: There is nothing about my tone, and you will please sit down.

Mr. Gladstein: I desire to make an objection.

The Court: Mr. Marshal, will you just——

(To the reporter) Read the question to the witness.

We will have no more monkey business here.

Mr. Gladstein: I object to the ruling.

Mr. Isserman: I object to the Court's remark.

The Court: You will sit down, Mr. Gladstein.

Mr. Isserman: And I want to register an objection to the Court's ruling.

The Court: Very well.

Mr. Isserman: As prejudicial to the conduct of the case and to the defense and making the defense impossible.

The Court: When I desire to ask a question, I am going to ask it. I am through with the interference of counsel.

Now go ahead and read the question, Mr. Reporter.

Mr. Isserman: May I ask the Court a question?

The Court: You may not.

(Question read.)

Mr. Isserman: I object to that question.

The Court: Overruled.

A. Under C I discussed——

The Court: Mrs. Lightfoot, did you hear me tell you to answer that question, either that you did discuss those subjects or that you did not discuss those subjects? Now, which was it? You did discuss them or you did not discuss them?

Mr. Isserman: I object to that question.

The Court: Overruled.

Mr. Gladstein: Your Honor——

The Court: Overruled. I don't want to hear anything from you, Mr. Gladstein.

The Witness: The way that the question was—I heard the question. It says——

The Court: Then you will answer it the way I tell you to, Mrs. Lightfoot. Now, did you discuss those subjects or did you not?

The Witness: The question includes 'things of that kind,' and——

The Court: Then I will take out 'things of that kind.'

Did you——

The Witness: May I hear the question?

The Court: I will give it over again.

Did you in that lecture discuss, when treating the subject of the Strategy of the Workers, the Dictatorship of the Proletariat, Imperialism, Just and Unjust Wars, or any of them?

The Witness: Well, were they mentioned during the course of that discussion, is that what you are asking me?

The Court: Well, I suppose that word 'discuss' has some peculiar meaning in the Communist Party—

Mr. Isserman: I object to that characterization.

The Court: I will reform my question.

Did you mention to the class in that lecture the subject of the dictatorship of the proletariat?

The Witness: I didn't mention it at that lecture—

Mr. Isserman: Just a minute. First of all I wish to object to your Honor's question——

The Court: Mr. Isserman, I am not going to have any interference here. Now you will just go over

there and sit down and then you can say what you want to say afterwards.

Now, Mr. Marshal, just escort Mr. Isserman over to the seat.

Mr. Isserman: I would like to make an objection to your Honor's question. Am I allowed to do it?

The Court: You have made it. Go back and sit down there.

(The marshal escorts Mr. Isserman to the seat.)

(Mr. Isserman rises.)

Mr. Isserman: Well, I rise now to object to your Honor's question.

The Court: Overruled.

(Mr. Isserman is seated.)

The Court: Now, Mrs. Lightfoot, you will give me a direct and responsive answer to that question. In that lecture did you discuss the subject—did you mention the subject of the dictatorship of the proletariat?

Mr. Isserman: I object to that question.

The Court: Overruled.

Mr. Marshal, will you show Mr. Isserman to his seat?

Mr. Isserman: May I not stand at this point?

The Court: You will sit right down. I have had enough contemptuous conduct from you and I am not going to have any more.

Mr. Isserman: I am not aware of any contemptuous conduct.

The Court: Well, you will be aware, all right.

Mr. Isserman: I would like to object to your Honor's remark and I move for a mistrial because your Honor has made the defense impossible.

The Court: Mr. Marshal, get busy.

(Mr. Isserman sits down.)

The Court (to witness): Now answer that question.

Mr. Isserman: I object to that.

The Court: Overruled.

The Witness: The question—may I hear the question again now; after so much I do not remember it.

The Court: The reporter will read it—or I will ask you again:

In that lecture did you mention the subject of the dictatorship of the proletariat?

Mr. Isserman: I object to that question.

The Court: Overruled.

A. In the beginning of that——

The Court: All right, I sustain the objection to that question. We will have no more of it.

Go ahead with your next question, Mr. Isserman."

Having successfully prevented the Court from getting an answer, Mr. Gladstein nevertheless then attacked the Court, as follows (Tr. 11,275-11,276):

Mr. Gladstein: And that includes the badgering tone and the bullying and blustering tone towards the witness.

The Court: Oh, there is nothing about my tone that is at all noisy or loud.

Mr. Gladstein: No witness can retain composure and dignity under the attack which your Honor has just levied during the last half hour. I assign it as misconduct.

The Court: I consider what you said as absolutely contemptuous, Mr. Gladstein. Now you can keep it up all you want but you do it against my orders.

(Mr. McGohey rises.)

The Court: Yes, Mr. McGohey; do you desire to say something?

Mr. McGohey: I desire to say that certainly your Honor's tone was not loud; there was nothing that I

observed in the nature of badgering, and I suggest that now we be allowed to go on with the trial.

The Court: Yes.

Mr. Isserman: And I object to Mr. McGohey's remarks as not being in accord with the facts.

Mr. Gladstein: I would like to say that they are directly contrary to the facts, and I am willing, if your Honor will permit, to have a poll taken of the members of the jury and the people of the press and the people in attendance in this courtroom at this moment as to——

The Court: Mr. Gladstein, you know earlier in this trial I found that no matter how much leeway I gave counsel they just tried to put the whole administration of justice into disrepute by just the sort of conduct that you are now indulging in, and I tell you now in the most emphatic way that I know without raising my voice, that you are to desist from that. It is wholly improper, as you must know, to talk about having the people in the courtroom polled and having the jury polled as to whether a statement made by somebody is accurate or not. That is all right perhaps in some place but it is not right or proper in a courtroom, and you must know that, so please let the matter go on."

Order had scarcely been restored, when the Court sought to elicit certain information from the witness, which was called for by a question asked by Mr. Isserman. Again Messrs. Isserman and Gladstein successfully prevented the Court from obtaining an answer, as follows (Tr. 11,281-11284):

"Q. At whose instance did you give that course?

A. That was a course given——

The Court: Why don't you just give the person's name. Who was it that told you to give that course?

Mr. Gladstein: Well, your Honor, I object to that. It may not have been a person.

The Court: Overruled.

Mr. Gladstein: I don't think you should direct the witness that way.

The Court: Read the question to the witness, please, Mr. Reporter, and see if we can stop this circumlocution.

(Question read.)

A. This course was given——.

The Court: Now, Mrs. Lightfoot, you are going to say at whose instance it was. That means giving the name.

Mr. Isserman: I want to object to that question.

Mr. Gladstein: I want to object to the Court making a direction to this witness and pointing his finger at the witness in an intimidating way. I assign that as misconduct, your Honor.

The Court: Mr. Gladstein, you are perfectly wonderful the way you make these things up.

Mr. Gladstein: I beg your pardon?

The Court: Oh, you go ahead now.

Mr. Gladstein: Does your Honor deny that you——

Mr. McGohey: Oh, if the Court please, can't we get on with the trial and stop this nonsense?

The Court: I raised my finger, and the rest of it is sheer imagination but done deliberately. I know what you are up to, Mr. Gladstein. You and your colleagues here are trying, and again and again have made positively false statements in the record for the purpose of making me appear to be

biased and prejudiced and to do the wrong things, that I am not doing. However, I am not going to sit silently by and have you do that.

Mr. Gladstein: I deny that part of your Honor's statement which charges me with making false statements.

The Court: I happen to be in charge of this case and I happen to be in charge of this court.

Mr. Gladstein: I know, your Honor, but I wish the record to show that I deny that part of your Honor's statement that charges me or my colleagues with any false statements, and I not only agree with but affirm that part of your Honor's statement which is to the effect that your Honor is biased and prejudiced.

The Court: Did I say that? I say you said so very often, and at your table things seem to be unanimous on that subject. You have attacked me again and again and I suppose you will continue to do it.

Now, go ahead, Mr. Isserman.

Mr. Isserman: I join in Mr. Gladstein's denial and object to your Honor's remarks.

The Court: Yes.

Do you desire me to have the rest of the counsel give their views, too, Mr. Isserman?

Defendant Dennis: Your Honor——

The Court: You may add your bit, Mr. Dennis.

Defendant Dennis: No. I arise to make a motion for a mistrial first on the basis of the hostile and belligerent and disrespectful attitude of the Court to this witness, which interferes with the testimony and the presentation of our case.

The second part of my motion is in connection with the ruling of the Court which deprives all

counsel frequently not only of stating the grounds of their objection, but even to rise to move an objection.

And, thirdly, I must say that the motion for a mistrial should be granted because you have placed counsel and the defendants under surveillance of this Court, and the case is actually proceeding now in that way and proceeding by a marshal—in a martial atmosphere.

The Court: Your motion is denied, Mr. Dennis.

Defendant Dennis: For those and other reasons I move for a mistrial.

The Court: The motion is denied.

Go ahead, Mr. Isserman."

## XXXIII

On August 5, 1949, shortly after the cross-examination of the witness Robert Manewitz by the United States Attorney began, he was asked when he had resumed activity in the Young Communist League. Thereupon, the following occurred (Tr. 11,577-11,578):

"Mr. Sacher: I object to this line of questioning.

The Court: Overruled.

Mr. Sacher: I was kept from——

The Court: I will have no interruption of the cross-examination; that is over.

Mr. Sacher: Even if it is justified?

The Court: I do not desire argument from you, Mr. Sacher—nor impertinence either."

## XXXIV

On August 10, 1949, in the course of the direct examination of the defendant Robert Thompson, the Court sustained an objection to a question asking the witness to

define Marxism-Leninism. Mr. Gladstein then proceeded to argue against the Court's ruling despite the Court's direction that there should be no argument, as follows (Tr. 11,818-11,819):

"Mr. Gladstein: May I call your Honor's attention to the state of the record——

The Court: No, I don't want to hear any argument about it.

Mr. Gladstein: But, your Honor——

The Court: I will hear what this witness directed to be taught, resolutions that he voted for setting up the schools and what was to be taught in the schools, and when the time comes, if it does, for him to testify what he taught and in particular schools, within certain limitations I will permit. I do not conceive the question before us to be one which makes that question relevant.

Mr. Gladstein: Would your Honor notice that in the record your Honor permitted the witness Budenz to be asked precisely that question, and to give an answer to it?

The Court: You know I just told you I didn't desire to hear argument but you wanted to get that point in and so again you have become contemptuous. Go ahead.

Mr. Gladstein: May I ask the witness the very same question that Mr. McGohey asked, your Honor?

The Court: I tell you, Mr. Gladstein, again, I do not desire to hear argument.

Mr. Gladstein: I do not want to argue but I am asking permission——

The Court: No, you are arguing, and you are again contemptuous."

XXXV

On August 26, 1949, during the direct examination of the witness Edward Strong, called by the defense, an objection was sustained to a question asked of the witness by Mr. Gladstein. The Court stated that it wanted no argument, and Mr. Gladstein then commented upon the ruling of the Court, in a private aside to the jury, as follows (Tr. 13,169):

"The Court: It is all right. I don't want argument, Mr. Gladstein.

Mr. Gladstein: That is no——

Mr. McGohey: What was that?

Mr. Gladstein: I was talking to myself.

Mr. McGohey: Were you talking to yourself or part of the jury?

The Court: I did not hear what was said.

Mr. McGohey: I heard.

Mr. Gladstein: I am willing to say what I said.

Mr. McGohey: Say it.

The Court: What did you say?

Mr. Gladstein: Your Honor is asking me and I am replying because your Honor asked, and not because Mr. McGohey directed.

Your Honor said you did not want any argument, and I said under my breath, 'Well, that is no secret.'

The Court: I think that is an extremely improper thing for you to do, and to do as you are leaning right on the rail of the jury box there, and I admonish you not to do that again."

XXXVI

On August 29, 1949, during the direct examination of the defense witness Max Weiss, Mr. Isserman sought to elicit testimony concerning the disaffiliation by the Communist Party from the Communist International. When

the Government objected, the Court heard argument by Mr. Isserman and by the United States Attorney and then overruled the Government's objection (Tr. 13,334-13,337). After some testimony on the subject, the Court sustained an objection to a question concerning a statement at a convention, and Mr. Sacher interjected himself and implied a partiality in the Court's rulings in permitting argument.

In doing so, he again persisted in arguing despite the Court's express statement that it would not hear him (Tr. 13,338):

"Q. Either at the National Committee meeting which you attended in 1940 or the convention you attended in 1940, was there any statement made by anyone that the decision to disaffiliate was one that was a Comintern decision?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: May I be heard on that, your Honor?

The Court: No.

Mr. Sacher: In view of the fact that Mr. McGohey——

The Court: I will not hear you.

Mr. Sacher: But Mr. McGohey was permitted to make a statement concerning this.

The Court: Mr. McGohey responded to a question from me and further asked leave to address the Court which I permitted. I do not desire to hear you.

Mr. Sacher: I have asked your Honor for leave.

The Court: Please be silent, Mr. Sacher. Again you are deliberately contemptuous.

Mr. Sacher: I am asking an opportunity to reply to Mr. McGohey.

The Court: Go ahead, Mr. Isserman."

## XXXVII

On September 9, 1949, during the direct examination of the defendant Carl Winter, Mr. Crockett asked him a question concerning the Black Legion, to which objection was made. The Court sustained the objection and at the same time stated that it did not want argument. Nevertheless, the following occurred (Tr. 13,893-13,894):

Mr. Crockett: May I point out——

The Court: I don't want further argument.

Mr. Crockett: I wanted to say——

The Court: I think you are in contempt now. Don't do it. I will not have any more. The time for that is over.

Mr. Sacher: I wish to object to your Honor's characterization of Mr. Crockett's conduct as contempt.

The Court: You may object. You have done enought of it yourself.

Mr. Sacher: I wish to object to that characterization. I think the record will prove, I think your Honor has sought to prejudice this jury sufficiently against counsel.

The Court: You are deliberately contemptuous again.

Mr. Sacher: I am not. I wish to defend the rights of my clients and the right to advocate their cause, and I resent the constant obstruction of that effort on the part of the Court.

The Court: There has been no obstruction of effort, but I will have order by the attorneys here, and I will enforce it with every power at my disposal.

Mr. Crockett: May I ask if the Court is suggesting there has been any disorder by the attorneys?

The Court: You insisted upon continuing arguing only a moment ago and I told you to stop.

Mr. Crockett: I was not arguing.

The Court: That is what you now say but every time you said it you kept it up. Let us stop now and go on with the questions."

XXXVIII

On September 14, 1949, in the course of the cross-examination of the defendant Carl Winter, the Government offered a certified photostatic copy of a birth certificate in evidence, to which Mr. Crockett objected. The Court granted leave to him to state the grounds of his objection. However, in place of stating legal grounds for his objection, he argued, as follows (Tr. 14,219-14,220):

"Mr. Crockett: First, I submit that there is an invasion of the family relationship. This refers to a situation which has no relation whatever, and certainly should not be submitted in this court. Certainly I think it is apparent from the exhibit itself that my client's signature appears nowhere on it. There is nothing on that or the original, and I submit that it is taking unfair advantage of a man to show him what——

The Court: Are you making a legal argument or a speech that we have had here so often?

Mr. Crockett: Under the circumstances I decline to state any further grounds. There is no point in talking to a Court, when I would like to state the grounds, when it is apparent that his Honor's mind is closed to any grounds that I might state."

Thereupon the Court ruled that only a portion of the exhibit was relevant and said (Tr. 14,222):

"I shall receive the name and the address, and so that there may be no misunderstanding about them I shall read into the record, rather than permitting the

exhibit to be handed around to the jury, the following:

"'Father of the child, full name, Carl Winter, Color or race, Caucasian. Age at time of this birth, 35. Length of residence in California, zero years, three months, zero days. Birth place, Pennsylvania. Usual occupation lecturer. Industry or business: self.'"

At this point Mr. Sacher said (Tr. 14,222-14,223):

Mr. Sacher: May I call your Honor's attention to the fact that you indicated there were just three items, and that Mr. McGohey limited it to three items? You have read about six now.

The Witness: May I say, your Honor——

Mr. Sacher: Just the name and address, as I recall it.

The Witness: May I address the Court?

Mr. Sacher: Name, address, and date.

Mr. Crockett: If the Court please——

The Court: Is this additional part that I read very objectionable to you?"

At this juncture, Mr. Crockett made a statement which, by its sarcastice emphasis on the word "seemingly," accused the Court of intentionally reading more of the exhibit than should have been read, as follows (Tr. 14,223):

"Mr. Crockett: If the Court please, in view of your Honor's seemingly unintentional reading more than——

The Court: Mr. Crockett, that is one of the most contemptuous things that has occurred at this trial.

Mr. Crockett: I am trying——

The Court: And for that you will be brought to justice.

Mr. Crockett: I am trying to say, with the Court's permission——

The Court: You just bear that in mind, Mr. Crockett.

Mr. Crockett: Your Honor, may I——

The Court: You say I seemingly do something and accuse me of deliberately evil motives here. That is something that I cannot pass over and I shall not. I now adjudge you in contempt for that."

## XXXIX

At the same session of the Court, the following occurred during the cross-examination of the defendant Carl Winter concerning his use of an alias (Tr. 14,240-14,241):

"Q. Now I show you what purports to be the Los Angeles Extended Area Telephone Directory of March 1943, issued by the Southern California Telephone Company and I direct your attention to page 202——

Mr. Sacher: Just a moment. I object to that question.

The Court: Overruled.

Mr. Sacher: I would like to be heard if I may.

The Court: I don't desire to hear you, Mr. Sacher.

Mr. Sacher: Will there come a day, your Honor, when you will hear us?"

## XL

On October 4, 1949, the day after the Court had filed an opinion denying the request of the defendant Benjamin J. Davis, Jr., to discharge Mr. Sacher as his counsel,

lengthy argument was made by Mr. Davis, Mr. Sacher, Mr. Isserman, Mr. McCabe, Mr. Crockett, Mr. Gladstein, and Mr. Dennis, that the Court reconsider its ruling. Immediately following the statement that the Court adhered to its ruling, Mr. Dennis moved for a mistrial. In stating the grounds Mr. Dennis, without any foundation, accused the Court of racial bias, saying (Tr. 15,293-15,294):

> "In light of the fact that the Court has recognized my inalienable constitutional rights and granted me, a white Communist, a defendant, who is not a lawyer, the right to conduct my own defense, its denial of this right to Mr. Davis, a Negro Communist, a defendant who happens to be a lawyer, can only be construed as an act of gross discrimination and an affront to the Negro people."

Dated: October 14, 1949.

HAROLD R. MEDINA,
*U. S. D. J.*

## Affidavit of Margery De Leon.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| UNITED STATES OF AMERICA, Appellee, against HARRY SACHER, RICHARD GLADSTEIN, GEORGE W. CROCKETT, JR., LOUIS F. MCCABE, ABRAHAM J. ISSERMAN, and EUGENE DENNIS, Appellants. | C 131/36 |

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MARGERY DE LEON being duly sworn under oath deposes and says that she has compared the attached copies of the transcript of the proceedings in the trial of the United States of America v. William Z. Foster, et al., No. C 128/87, held on October 14, 1949 before Judge Harold R. Medina, with the original reporters' transcript of that day which includes the following pages 16,113 to 16,157 inclusive and that the copy of the transcript hereto attached is a complete, true and accurate copy of the transcript of said date.

MARGERY DE LEON.

Sworn to before me this
28th day of November, 1949.

CELIA GELMAN
Notary Public, State of New York
Qualified in Bronx County
No. 03-1400460
Cert. filed with New York County Clerk
New York and Bronx County Registers
Term Expires March 30, 1951

**Extract from Stenographer's Minutes**
**(United States v. Foster et al.).**

| | |
|---|---|
| UNITED STATES OF AMERICA<br>vs.<br>WILLIAM Z. FOSTER, et al. | (Tr. 16,113) |

New York, October 14, 1949,
9:30 a. m.

(The clerk opened the Court at 10.09 a. m.)

The Court: Now we have simply declared court in session here and we will now take a recess during the deliberations of the jury. This is a mere formality.

Have you something to tell me, Mr. Gordon?

Mr. Gordon: Perhaps your Honor would like to note on the record the presence of counsel and the defendants, as you usually did.

The Court: Well, I shall be very glad to do that——

Mr. Gordon: I believe they are all here.

The Court (continuing): If I find my little piece here. Or has that been lost? Well, I have a copy of it.

Let the record show that the defendants are present and the attorneys for the defendants and for the Government are present.

Now is there any other announcement that anyone would care to have me make?

Mr. Crockett (to the clerk): Did the Judge get those corrections for the record?

(Tr. 16,113-A)

The Clerk: Yes.

Mr. Crockett: Very well.

The Court: I think that is all then. We will take a recess.

The Clerk: The court will now stand in recess while the jury continues their deliberations.

(Recess.)

(Tr. 16,114)

(At 11.10 a. m. a note was sent to the Court.)

(At 11.20 a. m. the following proceedings occurred in the courtroom:)

(The clerk confers with the Court.)

The Court: You may bring in the jury.

(At 11.25 a. m. the jury entered the courtroom.)

The Clerk: Shall I proceed, your Honor?

The Court: Yes.

The Clerk: Will the jurors kindly answer as their names are called.

Mrs. Thelma Dial.

Juror: No. 1: Here.

The Clerk: Russell Janney.

Juror No. 2: Here.

The Clerk: Mrs. Ida F. Howell.

Juror No. 3: Here.

The Clerk: Miss Kathryn E. Dunn.

Juror No. 4: Here.

The Clerk: Mrs. Jane Schultz.

Juror No. 5: Here.

The Clerk: Mrs. Lillian Berliner.

Juror No. 6: Here.

The Clerk: Patrick S. Reynolds.

Juror No. 7: Here.

The Clerk: Henry Eisler Allen.

(Tr. 16,115)

Juror No. 8: Here.

The Clerk: Mrs. Lillian Schlesinger.

Juror No. 9: Here.

The Clerk: James Frederick Smyth.

Juror No. 10: Here.

The Clerk: Mrs. Carrie L. Robinson.

Juror No. 11: Here.

The Clerk: And Mrs. Gertrude Corwin.

Juror No. 12: Here.

The Clerk: Madam Foreman, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: How say you?

The Foreman: The jury finds each of the defendants guilty.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find each of the defendants guilty, and so say you all?

The Court: I direct that the jury be polled.

(Tr. 16,116)

Mr. Gladstein: Your Honor, I would ask that the jury be polled separately and individually——

The Court: Yes, I direct that the jury be polled separately as to each defendant.

The Clerk: Mrs. Thelma Dial, you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged.

Juror No. 1: Yes.

The Clerk: Russell Janney, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 2: I do.

The Clerk: Mrs. Ida F. Howell, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 3: I do.

The Clerk: Miss Kathryn E. Dunn, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr. (Tr. 16,117), Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 4: I do.

The Clerk: Mrs. Jane Schultz, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 5: I do.

The Clerk: Mrs. Lillian Berliner, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 6: I do.

The Clerk: Mr. Patrick S. Reynolds, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 7: I do.

The Clerk: Mr. Henry Eisler Allen, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green (Tr. 16,118) Carl Winter and Gus Hall guilty as charged?

Juror No. 8: I do.

The Clerk: Mrs. Lillian Schlesinger, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 9: I do.

The Clerk: Mr. James Frederick Smyth, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 10: I do.

The Clerk: Mrs. Carrie L. Robinson, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

Juror No. 11: I do.

The Clerk: Mrs. Gertrude Corwin, do you say you find the defendants Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall guilty as charged?

(Tr. 16,118-A)

Juror No. 12: I do.

(Tr. 16,119)

The Court: Very well. I have already expressed to you——

Mr. Gladstein: Your Honor, may I interrupt for a moment?

The Court: Yes, you may.

Mr. Gladstein: Would your Honor inquire of the Madam Forelady whether the jury in deliberating considered the evidence separately and individually with regard to each defendant?

The Court: I see no occasion to do that. What do you say, Mr. McGohey?

Mr. McGohey: There is certainly no basis for it. Your Honor's instruction was perfectly clear, that that is what the jury should do. The jury has been deliberating for a long time. I see no reason to suppose that the jury has not fully complied with your Honor's instructions.

The Court: I have examined the rules. They make no such provision for such interrogation.

Mr. Gladstein: Nevertheless, may the record show that I make that request?

The Court: Yes.

Now, I have already thanked you ladies and gentlemen of the jury in my charge and I wish to repeat that now. You have performed a service here (Tr. 16,120) that is exceptional. You deserve the thanks of the entire community for the patience and careful attention with which you have performed your duties.

Now before I discharge you I have some comments to make that I consider of extreme importance. I need not tell you of the importance of the case. It has been stressed by counsel for both sides here. Perhaps its importance transcends anything that has been said by counsel. And I tell you now, when you leave here do not discuss with anyone anything about the case, anything about your deliberations, anything about any of the votes that were taken—anything whatsoever that has to do with this case from the beginning to the end. You must not do that, either to relatives or friends, or members of the press or magazine writers, or any of the host of curious persons who may seek to elicit from you some information about it. Whatever you might say would be subject to misinterpretation, subject to repetition and change and do irreparable harm to the administration of justice.

And so I tell you, in the most earnest manner of which I am capable, keep to yourselves everything that has occurred, everything that you have thought or have done or have not done. That is all a matter which rests and should remain solely with you. (Tr. 16,121)

And so I now tell you you may go with the thanks of the Court.

(Jury dismissed at 11:35 A. M.)

The Court: Now I turn to some unfinished business. The following will kindly rise:

Harry Sacher, Richard Gladstein, George W. Crockett, Jr., Louis F. McCabe, Abraham J. Isserman and Eugene Dennis.

(The above-mentioned rise.)

The Court: I will read a portion of the certificate which I have prepared pursuant to Rule 42(a) of the Federal Rules of Civil Procedure having to do with criminal contempts.

> "In conformity with Rule 42(a), Federal Rules of Criminal Procedure, I hereby certify that the series of criminal contempts set forth below were committed in the actual presence of the Court and were seen or heard by the Court during the trial of the case of United States of America v. Foster, et al., C 128-87, which commenced on January 17, 1949.
>
> "By way of preliminary, I may say that I would have overlooked or at most merely reprimanded counsel for conduct which appeared to be the result (Tr. 16,122) of the heat of controversy or of that zeal in the defense of a client or in one's own defense which might understandably have caused one to overstep the bounds of strict propriety. Before the trial had progressed very far, however, I was reluctantly forced to the conclusion that the acts and statements to which I am about to refer were the result of an agreement between these defendants"——

meaning you, Harry Sacher, Richard Gladstein, George W. Crockett, Jr., Louis F. McCabe, Abraham J. Isserman and Eugene Dennis——

> "deliberately entered in a cold and calculating manner, to do and say these things for the purpose of: (1) causing such delay and confusion as to make it impossible to go on with the trial; (2) provoking inci-

dents which they intended would result in a mistrial; and (3) impairing my health so that the trial could not continue.

"I find that the acts, statements and conduct of each of the defendants, hereinafter specified, constituted a deliberate and wilful attack upon the administration of justice, an attempt to sabotage the functioning of the federal judicial (Tr. 16,123) system, and misconduct of so grave a character as to make the mere imposition of fines a futile gesture and a wholly insufficient punishment. To maintain the dignity of the Court and to preserve order in the courtroom, under these circumstances, was a task of the utmost difficulty. There was, accordingly, no alternative than to give the repeated warnings which from time to time I gave, and to postpone the impositions of sentence until the close of the case. To have done otherwise would inevitably have broken up the trial and thus served the ends which these defendants tried so hard to attain. As isolated quotations from or references to the transcript can give but a partial view of the acts, statements, and conduct above referred to, I hereby make the entire record part of these proceedings.

"Accordingly, I adjudge the following guilty of the several criminal contempts described below"

and they are enumerated against each of these defendants.

Thirty-nine of them I shall not read, as they are sufficiently stated in the certificate.

The first, however, I shall read as follows:

"During the entire trial, Messrs. Sacher, Gladstein, Crockett, McCabe and Isserman (Tr. 16,124), attorneys and counsellors-at-law, and after March 17, 1949, Mr. Dennis, attorney pro se, joined in a wilful, deliberate,

and concerted effort to delay and obstruct the trial of United States v. Foster, et al., C 128-87, for the purpose of causing such disorder and confusion as would prevent a verdict by a jury on the issues raised by the indictment; and for the purpose of bringing the Court and the entire Federal judicial system into general discredit and disrepute, by endeavoring to divert the attention of the Court and jury from the serious charge against their clients of a conspiracy in substance to teach and advocate the overthrow of the Government of the United States by force and violence, by attacking the Presiding Judge and all the Judges of this Court, the jury system in this District, the Department of Justice of the United States, the President of the United States, the police of New York City, and the public press of New York and other cities.

"To effect this plan, these defendants in this proceeding, contemptuously and without justification:

"a. Disregarded numerous warnings of the (Tr. 16,125) Court concerning their wilful delaying tactics, except for ironical references thereto;

"b. Suggested that various findings by the Court were made for the purpose of newspaper headlines;

"c. Insinuated that there was connivance between the Court and the United States Attorney;

"d. Insisted on objecting one after another to rulings of the Court, despite a ruling on the first day of the trial, repeated several times thereafter, that all objections and exceptions would inure to the benefit of each of their clients unless disclaimed;

"e. Persisted in making long, repetitious, and unsubstantial arguments, objections, and protests, working in shifts, accompanied by shouting, sneering, and snickering;

"f. Urged one another on to badger the Court;

"g. Repeatedly made charges against the Court of bias, prejudice, corruption, and partiality;

"h. Made a succession of disrespectful, insolent, and sarcastic comments and remarks to the Court;

(Tr. 16,126) "i. Disregarded repeatedly and flagrantly the orders of the Court not to argue without permission and to desist from further argument or comment;

"j. Disregarded rulings on the admissibility of evidence so as to endeavor to place before the jury by leading questions the subject matter excluded;

"k. Persisted in asking questions on excluded subject matters, knowing that objections would be sustained, to endeavor to create a false picture of bias and partiality on the part of the Court;

"l. Accused the Court of racial prejudice without any foundation; and

"m. Generally conducted themselves in a most provocative manner in an endeavor to call forth some intemperate or undignified response from the Court which could then be relied upon as a demonstration of the Court's unfitness to preside over the trial."

I will now proceed to judgment.

Harry Sacher, you are adjudged guilty of the contempts of court as specified in the certificate to which I have just referred, to wit, specifications 1, 2, 5, 6, 7, 8, 12, 14, 15, 16, 17, 18, 19, 25, 27, 28, 29, 30, 31, 33, 36, 37 and 39.

(Tr. 16,127) It is adjudged that you are sentenced to imprisonment for a period of six months on each contempt and that the aforesaid sentences shall be served concurrently.

It is adjudged that on the 15th day of November, 1949, you shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six months.

Richard Gladstein, it is adjudged that you are guilty of the contempts of court as specified in the accompanying certificate, to wit, specifications 1, 4, 6, 8, 10, 11, 12, 13, 18, 20, 23, 24, 26, 27, 31, 32, 34 and 35.

It is adjudged that you are sentenced to imprisonment for a period of six months on each contempt and that the aforesaid sentences shall be served concurrently.

It is adjudged that on the 15th day of November, 1949, you shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six months.

George W. Crockett, it is adjudged that you are guilty of the contempts of court specified in the accompanying certificate, to wit, specifications 1, 3, 7, 21, 22, 27, 29, 37 and 38.

(Tr. 16,128) It is adjudged that you are sentenced to imprisonment for a period of four months on each contempt and that the aforesaid sentences shall be served concurrently.

It is adjudged that on the 15th day of November, 1949, you shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of four months.

Louis F. McCabe, it is adjudged that you are guilty of the contempts of court as specified in the accompanying certificate, to wit, specifications 1, 6, 7, 8, 9 and 27.

It is adjudged that you are sentenced to imprisonment for a period of thirty days on each contempt and that the aforesaid sentences shall be served concurrently.

It is adjudged that on the 15th day of November, 1949, you shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of thirty days.

Abraham J. Isserman, it is adjudged that you are guilty of the contempts of court as specified in the accompanying certificate, to wit, specifications 1, 6, 7, 12, 27, 31 and 32.

(Tr. 16,129) It is adjudged that you are sentenced to imprisonment for a period of four months on each contempt and that the aforesaid sentences shall be served concurrently.

It is adjudged that on the 15th day of November, 1949, you shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four months.

Eugene Dennis, it is adjudged that you are guilty of the contempts of court as specified in the accompanying certificate, to wit, specifications 1, 19, 22, 31 and 50.

It is adjudged that you are sentenced to imprisonment for a period of six months on each contempt and that the aforesaid sentences shall be served concurrently.

It is adjudged that on the 15th day of November, 1949, you shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six months.

Now are there any motions?

(Tr. 16,130) Mr. Isserman: May it please the Court, I desire to object to each and every finding in the certificate to which the Court has referred on the ground that the same are wholly unwarranted by anything which has occurred in the course of this trial.

Your Honor's action in respect to me is but a reflection of the atmosphere of bias and prejudice which this Court has shown and with which this entire trial was attended from the very first day. Your Honor's action is an effort to intimidate members of the bar in their bounden duty to represent their clients to the best of their ability, and is a reflection of the article by now Justice Clark of the Supreme Court in which he threatened to punish and go after lawyers who are defending clients charged with being Communists.

I also wish to say that your Honor's conduct in the sentence of me and in the punishment is but another aspect

of what your Honor has done in this case to make an easy road for conviction of the defendants. I am quoting Justice Jackson in the Krulewitch case in respect to conspiracy.

I charge further that your Honor's conduct is against every judicial canon of ethics and as such is but a sharp reflection of the very bias and prejudice (Tr. 16,131) with which we have charged your Honor from the beginning of this case.

I wish to state also that all I have done in this case has been in the pursuit of the defense of my clients under the most difficult circumstances and in a case which your Honor has finally said, in discharging the jury, has a greater importance than even counsel for the defendants have claimed. And I wish to remind your Honor that when we did claim it you held us in contempt because you said this was an ordinary criminal case. Your Honor's action in my case has proved conclusively that it is not an ordinary criminal case, that it was a trial in which there was no substance of due process, of any due process.

I therefore move for a vacating of your certificate.

The Court: The motion is denied.

When I said "any motions" I meant were there any motions relative to the case in which we have just received and recorded the verdict.

Mr. Isserman: If the Court please, in respect to the case, on behalf of my clients I wish to advise your Honor that we intend to file a motion in arrest of judgment and a motion for a new trial within the time (Tr. 16,132) allowed under the rules or such further time as your Honor may allow on application within the next five days, and that pending the filing of such application and the argument thereon that the bail for the defendants be continued, and that the defendants who have been remanded to jail for the period of the trial now be allowed on bail as undoubtedly the trial has ended with a verdict of the jury.

The Court: I shall not release those defendants who have been in custody. Indeed, I shall remand and now do remand all of the defendants pending sentence, and I shall impose sentence one week from today. That is to say, at 10.30 o'clock in the morning of October 21, 1949.

How much time do you desire within which to make the motions? The rule provides, and you yourself have just indicated, Mr. Isserman, that an application might be made for an enlargement of the five-day period provided the application was made within that period. I should prefer to entertain that application now. I do not insist upon it.

Mr. Isserman: In view of the length of the record and the issues involved and the time required to prepare such a motion and to argue it, I ask that (Tr. 16,133) the five-day period be extended not to exceed thirty days. The filing of the motion.

The Court: Well, I will hold that in abeyance until I have heard what the other counsel have to say.

Mr. Sacher: May it please the Court, I take it that you have disposed of the application for bail on behalf of these defendants.

The Court: Well, I have no open mind on it. It seems to me it is the only thing I can properly do, in view of the evidence here, which in my judgment, after the most careful study during the trial, amply supports the verdict. I feel I have no other alternative than to remand the defendants, and I have decided to do that.

I think if you wish to present any motions now you may do so. What I am particularly interested in at the moment is the time of enlargement of the making of motions under the rule. I am not disposed to grant thirty days, but I should like to hear from all counsel on that before I make any determination.

Mr. Sacher: I think that your Honor's concluding remarks to the jury have indicated an appreciation on your Honor's part of the profound questions that are neces-

sarily involved in this case. I think it must be (Tr. 16,134) appreciated that the last word has not been said, as indeed it could not be said, in this court. If what American lawyers have come to regard as constitutional liberties in our country still survive unimpaired, then I feel that the day is inevitable when this verdict and this judgment will be reversed.

I think, however, that the complexity of the questions, the volume of the questions, the hugeness of the record, require that, if we are to assist your Honor in arriving at a decision of the application for an arrest of judgment and for a new trial, that we should have an opportunity to lay it before you.

The Court: Well, now, before you go on there, Mr. Sacher, it must be apparent to you and to the other counsel for the defendants that I have done everything that a human being could do to be careful in this case. On the law, I have studied it until my eyes nearly stopped functioning; I have worked on it, I have theorized on it. I have been over every one of these applications that have been made here so repetitiously; I am familiar with these arguments that have been made and the points that have been made. And having decided them so often, after the most mature consideration, it seems to me highly improbable that on the making of motions, which (Tr. 16,135) will inevitably be another repetition of the same points, that I shall have a different view on it. This is not the only important criminal case there was before. I have participated as a lawyer in many of them myself, and I have never known one where more than a few days' of reconsideration of the same questions pressed upon the Court at the trial was allowed afterwards. Indeed, I can recall many where the motions were made promptly at the conclusion of the trial and denied from the bench, not because the Judge had not or did not desire to consider the point, but because he had considered them and studied them and gone over them.

Now, with that in mind it seems to me that thirty days is not a period that is appropriate under these circumstances.

Mr. Sacher: You see, your Honor, we assume that every time we present something to your Honor that you will consider it, and you have more than hinted that your mind is pretty much made up on the motion that we are talking about in advance of hearing anything. You assume repetition, you assume many other things.

The Court: All I say is, when a Judge has (Tr. 16,136) decided the same point once, twice, three, four, five times, that it seems highly improbable that the sixth time that point is presented to that same Judge that he will come to a different conclusion. That is all I say.

Mr. Sacher: But something new has been added to the situation and that is your Honor's charge to the jury. And certainly that will involve a number of questions or arguments which we need time to argue. And I think I do not overstate the case when I say that your Honor has given us one or two little things to think about, in addition to this motion, in the time that we are talking about. I should like briefly, with the Court's permission, to address myself to that for a moment as a consideration for time.

The Court: You may do so.

Mr. Sacher: I should like to say to your Honor that I should have thought that a due regard, for what at the moment I have at my command no other words, for the decencies, that we lawyers should have had an opportunity to be heard before we were adjudged guilty and sentenced. I recognize——

(Tr. 16,137) The Court: This is not a proceeding under Rule 42(b).

Mr. Sacher: I recognize, your Honor, that the power rests in the Court to act summarily. I am not concerning myself at the moment with power. I am concerning myself rather with the question of discretion and judgment. And

I should have imagined that at a time like this when the Court has imposed sentences of such great consequences, it would have seen fit to have acted in accordance with what we regard as American tradition, one that would give us a running chance; we should have had that.

I wish to say to the Court that I have an abiding faith that the time will come when it will be appreciated that counsel in this case served not only their clients, not only the due administration of justice, but served all the people of our country, in the great traditions of Andrew Hamilton, Charles Evans Hughes, Clarence Darrow and Wendel Willkie. True, we are much humbler laborers in the vineyard, but humble or not, the fact is that we six counsel yield to no one in love of country and in love of the constitutional liberties which we have learned to love and to seek to preserve.

And I therefore should move the Court at (Tr. 16,138) this time to take those facts into consideration in connection with, one, the enlargement of time as requested by Mr. Isserman so as to give us an adequate opportunity to prepare, and secondly, I would respectfully appeal to the Court to reconsider what it has done to the lawyers and to give them an opportunity to be heard before they are found guilty and sentenced.

I say to your Honor that the bar of New York and the bar of America will not agree that in a matter of such consequence lawyers should have been summarily disposed of, as your Honor has done.

The Court: Let me say this to you, Mr. Sacher: as to these contempt adjudications, let them be notice to you and to all who may be tempted to follow your example that there is power in the judicial system of the United States under the Constitution and the laws of the United States to protect and maintain the dignity of the court and the orderly administrative of justice therein.

It is contemplated in the rules that the punishment should be summary. I have waited until today because it was the first time that I could act, as I have indicated in what I read to you from the certificate.

Mr. Sacher: I wish to say to your Honor that (Tr. 16,139) I have a grave fear that, far from accomplishing the objectives which your Honor has just referred to, that your Honor's summary punishment can only have an effect of intimidating the bar of America.

In that connection let me point out to your Honor that there are States in the South where the Negro people are still excluded from service on juries systematically, and I say to your Honor that if any part of the punishment meted out to us arises from the fact that we challenged the method of selection, then I say to your Honor that what you have done is to give encouragement to judges in the South to intimidate lawyers of every race and color in the South against seeking to democratize the jury system there.

And I respectfully submit, your Honor, that a country with an intimidated bar is a country whose liberties are in danger. Here in America we know that the American bar occupies a place of honor in the achievement and preservation of the liberties of our people, and I say, your Honor, with all due respect to your decision and judgment here that any threat to the integrity, independence and courage of the bar can only constitute a threat to the integrity and wholesomeness and preservation of our (Tr. 16,140) civil liberties.

For myself let me say, your Honor, that I speak of intimidation not in personal terms. If it be necessary that in the cause of American liberty I shall have to serve six months, then I say to your Honor the price will have been very, very small. I hope that it will not be necessary in our country for an advocate to have to do that, but if it be necessary——

The Court: It isn't the price of liberty; it is the price of misbehavior and disorder as stated in the certificate.

Mr. Sacher: I say to your Honor——

The Court: You continue in the same brazen manner that you used throughout the whole trial. You try to make it appear as though it were non-existent and you had never done any of these things. From the beginning you have never shown the slightest trace of consciousness of what you have done or any desire to amend your ways; despite all kinds of warnings throughout the case, you continue with the same old mealy-mouth way of putting it which I have been listening to throughout the case. It would have been much better if you had paid attention to what I told you not to do. That would have been an effective (Tr. 16,141) way.

Mr. Sacher: Well, your Honor, I don't think it would moot anything to continue the discussion. I made this argument in support of what is really an application for an opportunity to be heard before we were found guilty.

The Court: Very well; I will hear the others.

Mr. Gladstein: Your Honor, may I say a few words?

The Court: Yes.

Mr. Gladstein: Your Honor has adjudged me guilty of contempt, and a judgment, I may say, which is unique in my experience, not only that such a judgment should be rendered but indeed that anyone should accuse or think of accusing me of contempt of court, for never in two decades of practice at the bar has anyone suggested or intimated that my conduct has been for the purpose of bringing the administration of justice into disrepute. To the contrary, I pride myself upon the fast friendships and the strong bonds which I have formed with many judges in the Federal Judiciary throughout the United States in many jurisdictions. Your Honor, I wish I could say that I felt some consciousness of guilt of the things that your Honor read from that document, because if I did it would be (Tr.

16,142) much easier to reconcile myself to the idea of accepting punishment, but it is not easy to accept the notion of being punished without having committed a crime.

As I read your Honor's description, which, by the way, constitutes a characterization rather than an enumeration from the record of the things that were actually said or done, it seemed to me very difficult to put myself or my colleagues in this case in the places which your Honor has assigned. It seems to me that your Honor was describing something like a moving picture which was flashing in front of me and in which the characters were other people.

I must say that in this case my sole effort has been, as it has always been, to take seriously and to put life into those high canons of ethics which are ingrained in us at the outset of our professional careers, and the most important of those canons to me that it is the solemn duty of an American lawyer never to turn away the cause of the oppressed or the unjustly accused.

This case to me represents one in which men have been accused, and the effort has been made to imprison them because they spoke their minds freely and honestly. It is the duty of a lawyer in any case to defend his clients with zeal, with earnestness (Tr. 16,143) and with fervor. That duty becomes even more solemn and important in a case where the rights and the precious liberties of all the American people are really deeply involved.

I must say for myself that I do not accept the characterizations of my conduct which the Court has seen fit to set forth, but however that may be, the passage of time and the judgment of history will determine whether your Honor's accusation against me is the true one, or whether it be that I and those who have been associated with me in defense of this case have sought always and exclusively to defend our clients in accordance with the highest traditions of the American bar.

Mr. Crockett: May I be heard, with the Court's permission?

The Court: Yes.

Mr. Crockett: Long prior to today your Honor saw fit to adjudge me in contempt, which I believe was the first adjudication of contempt that had been made in the course of the trial. Today additional adjudications have been made. As a lawyer, I shall of course take whatever course of action is open to me to remove from my record that any Court has found my conduct inconsistent with the (Tr. 16,144) best conduct to be expected from a member of the American bar. Nevertheless, in this particular instance, I regard it as a badge of honor to be adjudicated in contempt for vigorously prosecuting what I believe to be the proper conception of the American Constitution, and I say again that if I were offered the opportunity to participate in another trial like this I would fight it just as vigorously as I have tried to fight at this time.

It so happens that because of conditions in America, I of course look upon many problems different from the way my associates, perhaps the Court, would look upon them. I have to look upon them not only as a lawyer but also as a member of a minority group. For the first time in the fifteen years that I have been practicing law I have had an opportunity to practice law as an American lawyer and not as a Negro lawyer. I have enjoyed that brief trip into the realm of freedom, as far as the practice of law in America is concerned. I have enjoyed it so much that I intend to continue that way. I am aware, of course, that this is an important case.

I am also aware that this is not the end of this case. There have been similar instances in history, especially in connection with trials under the Alien and Sedition Laws, and judges (Tr. 16,145) have seen fit to imprison attorneys because the attorneys had disagreed with the judge's conception of the law, but history revealed that the attorneys in those cases were correct.

I have faith in history, I have faith in the American people, I have faith in the American bar.

Mr. McCabe: If your Honor please, I have had occasion before, during this trial, to state to your Honor that I did not accept the strictures which from time to time your Honor addressed to me.

I now wish to put upon the record a categorical denial of the charges and the findings which you have made with respect to my conduct. I have said that I yield to no one in appreciation of the oath which I took, in which I pledged full fidelity as well to the Court as to my client. I have tried to live up to that oath.

I should like to read into the record paragraph 15 of the Canons of Professional Ethics which I read before I entered on the trial of this case, and indeed before I accepted a retainer.

Paragraph 15 of the Canons of Professional Ethics laid down for the guidance of lawyers reads as follows:

> "The lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance (Tr. 16,146) and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense."

If I have been guilty of some neglect or failure to carry out paragraph 15, to carry out my duty to my client, I regret it. If I have been guilty of any failure to observe the obligation which I took to observe, full fidelity to the Court, I regret that also.

In going over the various sections of the record in which discussions were had between the Court and myself, I may say that I have been unable to find any aggressions or failures to observe that oath which warrants the findings which your Honor has made without a hearing here today.

(Defendant Dennis rises.)

The Court: Yes, Mr. Dennis.

(Tr. 16,147) Defendant Dennis: This trial and the verdict, is an evil and an illegitimate product of a bi-partisan conspiracy, of a conspiracy of men who want to destroy the Bill of Rights and peace, and I think that the adjudgment of counsel and the accompanying decision to remand the defendants without bail is in keeping with the sinister and police state character of this trial. I don't think any democratic-minded American, and people in other lands, will pass off lightly even the sentencing of the lawyers which took place today because this is just the first teeny fruits of the infamous verdict in this trial, but it will serve to alert and to arouse our people as to their stake in what has happened here. And I would say to your Honor, as in Nazi Germany, in Mussolini Italy, men also sat in high tribunals, also wore black robes and also handed down pro-fascist decisions; but I would remind the Court that the people reversed those verdicts and decisions just as our people will reverse the decisions and the verdict in this case, and the people's verdict will be for peace, for democracy and for social progress.

Mr. Isserman: If the Court please, it is quite obvious that November 15th will be a date at which our services to our clients in connection with (Tr. 16,148) the various matters of this case will not—at which those services will not be terminated. It is also quite obvious from what counsel have said that we will not let the matter of your Honor's sentence rest where it is, and certainly we will consult with each other and with counsel and take such steps as we can

to erase this blot which is more a blot upon the American judiciary than it is upon us.

The Court: That won't help it——

Mr. Isserman: May I continue?

The Court: Yes.

Mr. Isserman: I ask, therefore, in view of the fact that the Court has made the entire record of this case a part of the record on which you sentenced us, that you defer the execution of sentence, or stay the execution of sentence on counsel until such time as the appeal they will take, if an appeal be necessary, be disposed of, so that, 1, we can continue in our own defense during such an appeal, and, secondly, which is even more important, that we be unhampered in continuing our duties to our clients which at this stage of the proceedings cannot lightly be turned over to other counsel. And I ask your Honor——

The Court: That request is denied.

Mr. Isserman: I ask your Honor further to (Tr. 16,149) consider the question of bail pending the sentence of the defendants; the one single fact that your Honor's charge, as made yesterday, contains interpretations of the United States Constitution and the First Amendment which cannot be the last word on that interpretation, and which is not in accord with any prior decision of the United States Supreme Court—in fact, I regard it as verbal semantics to undermine the First Amendment and nothing more.

Be that as it may, that one question alone indicates that there is a substantial question on appeal, and under the Federal statutes and cases where there is such a substantial question to be decided on appeal, the defendants are entitled to bail, and I therefore ask your Honor to reconsider your Honor's ruling on the remand of the defendants to jail at this time, and to allow them on bail so that they may assist in the preparation of whatever next steps are necessary, and so that the principles of law which govern bail be lived up to.

The Court: Well, I will hold the matter in abeyance until I hear from Mr. McGohey.

Mr. Gladstein: May I make one further request, your Honor?

The Court: Yes.

(Tr. 16,150) Mr. Gladstein: Since your Honor has read only a portion of the certificate of adjudication with respect to each of the defense attorneys, and your Honor has indicated that each certificate incorporates by reference the transcript of the entire proceedings in this case, including the proceedings involved in the jury challenge, I take it that I am correct in saying that each lawyer has a right to expect to receive a full copy of the Court's adjudication in his case so that he may proceed with such legal steps as he deems advisable.

The Court: Well, that is all out of my hands now. Whatever is necessary to be done the United States Attorney doubtless will do it. I have only prepared in my chambers the copies of those that could be readily typewritten off by my personal secretary, and I suppose the number of copies altogether are only four or five.

Mr. Gladstein: That's isn't the point of my (Tr. 16,151) inquiry. Since your Honor incorporates by reference in the document, and therefore there is deemed attached to your Honor's certificate the transcript of proceedings, I now ask that the Court direct that if, as and when such certificate is served upon me—and I take it each of the other defense attorneys makes the same request with respect to himself—there be delivered as a part of such certificate of adjudication the complete document that your Honor has now read, including the portion deemed read by virtue of your Honor's incorporation by reference.

The Court: You don't mean a whole copy of the record?

Mr. Gladstein: I do, indeed.

The Court: If you do, the motion is denied.

Whatever the law requires to be done I have no doubt Mr. McGohey will do, and if there is later presented to me some questions that are within my competence to decide on that, why, I will entertain them as they come along.

Now, Mr. McGohey, what do you say on this matter, this twofold matter, first, of remand, and, secondly, of the time within which to make motions? (Tr. 16,152)

Mr. McGohey: Well, answering them in that order, your Honor, there is certainly no doubt about the provisions of the rule that authorize the remand of the defendants at this time pending sentence.

The Court: There is no doubt whatever of that.

Mr. McGohey: Nor is there any doubt that your Honor's announced decision as to how you intend to exercise the power and the discretion which the rule gives you is, in my opinion, perfectly sound. There can be no reason, there has been no reason urged upon your Honor why in a case of this kind any more than in a case of other important matters in this court, the defendants, with a verdict of guilty, are normally remanded until the time of sentence. Your Honor is doing nothing here that wouldn't have been done and hasn't been done many times in this district and in other districts in similar cases; and I say that your Honor, I hope, will not change what you announced was your attention to do with respect to that. I think the remand should stand.

Now with respect to the question of time, let me recall to your Honor that back a year ago all of the constitutional aspects which the defense counsel believed inherent in this case were raised. (Tr. 16,153)

They were argued at great length for three full days before Judge Hulbert.

Motions of the same kind were renewed before your Honor in December, I think; then again in January, back in January when we began the trial. They were urged upon your Honor at various times throughout the Govern-

ment's case. They were urged and argued and briefed at the end of the Government's case, and in each one of those instances there was a repetition of the same arguments, the same citation of cases and the same thoughts which it was hoped would change your Honor's view from what you had first expressed and from what Judge Hulbert had expressed in October of 1948.

And then when at long last we came to the end of the whole case and both sides had rested, for two weeks we heard again the same arguments on the same propositions of law. We went over the same thing again. We had all the motions to strike.

Now it is true, as counsel says, that at this stage there is something in the case which wasn't there before, the Court's charge. But if there ever has been a clearer document I haven't come across it in the books, and it is in the record, and it seems to me that if your Honor were to allow an additional (Tr. 16,154) five days beyond that prescribed in the rules, that counsel would certainly have ample time to prepare and brief any argument that could be made.

Bear in mind, as Mr. Isserman indicates, the chief point of attack upon the charge is your Honor's view of the constitutional question. Now that is the thing that we have been arguing for over a year.

Now if the Court were to grant an additional five days, within which the motions could be made I mean, your Honor, that would give counsel a full ten days to get these motions prepared, and if the Court were to require that the motion papers be served on October 24th at 10 A. M. and that the argument be set down for October 28th at 10 A. M., counsel would certainly have ample time.

The Court: All right. That is just what I will do. I will——

Mr. Gladstein: Your Honor, may I reply?

The Court: What is that?

Mr. Gladstein (continuing): To Mr. McGohey with regard to the question of argument.

The Court: Yes.

Mr. Gladstein: I will be very brief about it. (Tr. 16,155) Mr. McGohey's main burden is that he anticipates that the same appeal on the constitutional question will be made which has been made before and which has been ruled upon by your Honor, but I think he is mistaken in two directions: First, I think that we have now reached the point where perhaps these same arguments may have new meaning. Old arguments in a new context can well have new meaning, and I think that it should not escape our notice that this case, this ordinary little criminal case that we have been trying here for so long is not escaping the attention of the Committee on Human Rights of the United Nations, and that attention by that committee and by that international organization has been focused upon the proceedings that have been taking place here, and I believe——

The Court: If that is what it is I will decide right now that the time——

(Mr. Gladstein attempted to speak.)

The Court: I don't want to hear any further argument on it. I will extend the time so that the argument on such motions as may be made will come before me on the 28th of October and that the (Tr. 16,156) motion papers be served on or before Monday, October 24th.

Mr. McGohey: Pardon me, your Honor.

The Court: Yes.

Mr. McGohey: Would your Honor add to that, that these motion papers should be served not later than 10.30 on October 24th, so that I can have that time? If I get them at 5 o'clock or 6 o'clock on the 24th I have only four days and not the five days' notice which I ought to have.

The Court: Well, I am not disposed to make it 10.30 in the morning, Monday. I will make it 3 o'clock in the afternoon of that day.

Mr. McGohey: Well, if your Honor please, would you require that they be served on Saturday? If I get them at 3 o'clock——

The Court: No, I don't think I want to cut their time down on that. This weekend business is always a difficult one with counsel. But it seems to me if you get them—what did I say, 3 o'clock on the 24th?

Mr. McGohey: You said 3 o'clock on the 24th. And then I have the 25th, 26th, 27th, I have three days then, your Honor. (Tr. 16,157)

The Court: Well, then, if you have to ask to have it put over a little bit they will all be glad.

Mr. McGohey: Well, I had hoped that maybe we would not have to put it over, your Honor. And three days is pretty short. We usually get voluminous papers, you know, on motions.

The Court: Yes, but if your arguments that you have just been making to me now hold and they just thresh over the same old straw, you won't need so much time. I think I am going to stick to that.

Mr. McGohey: 3 o'clock, Judge?

The Court: 3 o'clock on Monday, the 24th, for the service of the papers, and the argument at 10.30 o'clock in the morning of Friday, October 28th.

Now, I have given reconsideration to that matter of remanding and I am going to adhere to my ruling, that the defendants are hereby remanded and the date of sentence is fixed at 10.30 in the morning, one week from today, that is to say, October 21, 1949.

I will now adjourn court.

(Adjourned to October 21, 1949, at 10.30 o'clock A. M.)

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The entire record in *United States of America* v. *Foster, et al.* C 128-87, is incorporated herein by reference as set forth in Point IV of Designation of Record on Appeal, infra, page 104.

## Designation of Record on Appeal.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA<br>vs.<br>HARRY SACHER, RICHARD GLADSTEIN, GEORGE W. CROCKETT, JR., LOUIS F. McCABE, ABRAHAM J. ISSERMAN and EUGENE DENNIS,<br>Defendants. | C131-36 |

For the purpose of enabling the Clerk to transmit to the Court of Appeals the record on appeal, the defendants designate as the record in the above-entitled case the entire proceedings in the District Court including the following:

I. Contempt Certificate pursuant to Rule 42 (a) Federal Rules of Criminal Procedure;

II. Orders dated October 14, 1949 adjudging all defendants herein in contempt, notice of entry therein and all other documents filed with the Clerk of the United States District Court in said case;

III. Pages 16,121 to 16,157 inclusive of the typewritten transcript of the court session of October 14, 1949 at which the above defendants were adjudged guilty of contempt and sentenced, as the same offense in the transcript of the case of *United States of America* v. *Foster, et al.*, C128-87;

IV. The entire record in the above-mentioned case of *United States of America* v. *Foster, et al.*, C128-87, which was incorporated by reference in the contempt certificate aforementioned including the following:

(a) The entire typewritten transcript numbered pages 1 through 4,825 of the pre-trial proceedings;

(b) Pre-trial Exhibits 1 and 2 and A (id.) and B (id.);

(c) Defendants' challenge Exhibits 1 through 400 (id.), including those exhibits marked for identification but not admitted in evidence;

(d) The Government's challenge Exhibits A through EE, including those exhibits marked for identification but not admitted in evidence;

(e) The Court's challenge Exhibits 1 (id.) and 2;

(f) The entire typewritten transcript numbered pages 1 through 16,501 of the trial proceedings;

(g) The Government's trial Exhibits 1 through 234A, including those exhibits marked for identification but not admitted in evidence;

(h) The defendants' trial Exhibits A (id.) through 14 x D (id.), including those exhibits marked for identification but not admitted in evidence;

(i) All documents filed in the District Court, including pleadings, motions, opinions, findings, objections, orders, affidavits and all exhibits annexed hereto and filed in connection therewith;

(j) All other papers and documents placed in the custody of the Clerk of the Court, including voir dire questions and offers of proof.

(k) All docket entries in the Clerk's office.

V. All docket entries in the Clerk's office in this cause.

Dated, New York, N. Y., November 17, 1949.

Respectfully submitted,

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